Legislative Hearing
of the

SELECT COMMITTEE ON INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

Senator Liz Figueroa, Chair

"Agreements and Risks to California Legislative Authority"

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State Capitol

SENATOR LIZ FIGUEROA: Good afternoon. Welcome and thank you for being here at this very important hearing on agricultural biotechnology, international trade rules and the risks to our legislative power. I am happy to call this hearing today in my new capacity as chair of the Senate Select Committee on International Trade Policy and State Legislation.

As you are all no doubt aware, this is a busy time in Sacramento. The city is currently playing host to over 1,500 delegates, including ministers of agriculture, environment and trade, from over 100 countries who are in town to attend the International Ministerial Conference and Expo on Agricultural Science and Technology.

Sponsored by the U.S. Department of Agriculture and the State Department, this event will focus on the promotion on the promotion of biotechnology as a way to increase agricultural productivity here and around the world and the trade agreements that work to make that happen.

As policymakers in the sixth largest economy in the world, there are many reasons we should be paying attention to this conference and the trade policies that are being promoted there. This Select Committee was created three years ago as a result of growing concerns that international trade roles and agreements,

including those discussed at the USDA conference, could impair the traditional ability of state and local lawmakers to pass legislation addressing matters of public health, safety, and welfare.

Let there be no doubt that increased international trade and investment is a critical, undeniable building block to a prosperous California. This is, indeed, an issue of great importance. Trade can and will yield substantial economic benefits for all of California. That said, it is essential to guarantee that such trade agreements are consistent with our longstanding democratic institutions as well as our ability to debate, craft, and pass legislation in the public interest.

It is through this lens that we hold today's hearing. In light of the recent initiation of a WTO dispute that could have implications for our own ability to regulate in this area, we felt it important for us as California lawmakers to better understand the relationship between federal agricultural and trade policies and their impact on the State of California.

We will also be exploring what the appropriate role of the state should be, if any, in the regulation of the rapidly growing biotechnology industry.

As you will hear today, California has traditionally deferred to the federal government for the regulation of this industry, and we will hear from a variety of perspectives on whether or not there is a need for us to develop a stronger oversight and regulatory role.

I would like to add here that while we invited and confirmed the attendance of several representatives from the biotechnology industry to testify here this afternoon, they have all canceled within the last few days. That is very unfortunate because we would have appreciated hearing their side of the argument. Their unique perspective and important voices will be greatly missed today.

I want to thank all of the witnesses who have taken time from their schedules to help us better understand these issues, with a special welcome to Dolores Huerta, Vice President Emeritus of the United Farm Workers of America and a person of great courage, conviction, and inspiration to all of us who have had the pleasure of working with for many years. Thank you, Dolores, for being here.

I also want to recognize some very special guests. Joining us is a 13-member delegation from Europe here in the United States to examine issues of agriculture and biotechnology. Welcome.

Also with us is Caroline Lucas, a member of the European Parliament from the United Kingdom, who will be testifying on the issues of sovereignty and the US-WTO case against you and Tito Barbini, the regional minister of Agriculture for the region of Tuscany, in Italy.

And I welcome all of you for being here this afternoon.

Finally, I want to say something about the demonstrators in town. We need to never lose sight of the fact that what makes this country unique and special is the right of these demonstrators, and all of the demonstrators, to voice their views to the public and the elected officials. This hearing today is about whether California, having heard their voices and the voices opposing them, will be able to do more than just listen.

On that note, let's begin our first panel, but first let me welcome my colleagues, Senator Soto—thank you for being here—and Senator Cedillo.

Our first panel, the discussion is aimed at: Is there a need for state regulation of agricultural biotechnology, and if so, what should this regulation look like? I'd like to invite all witnesses on this first panel to come to the witness table.

SENATOR NELL SOTO: Can I say something?

SENATOR FIGUEROA: Yes, Senator Soto, feel free.

SENATOR SOTO: Thank you. I just want to take a minute to welcome the people from overseas. I think it's wonderful that they've come to listen and to be here and to take part in this. Congratulations for doing that, and I hope we can all get something out of this. Thank you very much.

SENATOR FIGUEROA: You may start. Please introduce yourself.

MR. GUS KOEHLER: I'm Gus Koehler. I'm currently a principal consultant with Time Structures. I was with the California Research Bureau and researched this issue for the past six years and have been invited to speak, and I appreciate that opportunity very much.

SENATOR FIGUEROA: You're welcome. Thank you for being here.

MR. KOEHLER: I'm going to read my comments, hopefully in a pleasant manner, to reduce the amount of time that I could take.

SENATOR FIGUEROA: Oh, we appreciate that. Thank you.

MR. KOEHLER: For almost twenty years the State of California has been involved in implementing federal regulations and following federal food biotechnology policy. The state has also been deeply involved in funding biotechnology-related research and training services. Clearly, the issue of whether California should regulate biotechnology has been answered. We are involved in it now. Since this is so, there are two important questions before us:

- Should California broaden its involvement with food biotechnology regulatory activities, much as the California Environmental Protection Agency has done with pesticide laws or as the Air Resources Board has done with air pollution regulations, to address emerging scientific, ethical, environmental, economic, sovereignty, and consumer issues?
- How much should California defer its sovereignty to protect the health and safety of its people, environment, and food production industry to federal and global institutions?

To answer these two questions, I think we must have a clear statement of California's food biotechnology policy. Then we must be able to assess how effective federal, state, and global regulatory organizations have been in meeting this policy.

Finally, it is necessary to assess the current emerging scientific, ethical, and economic issues to determine if additional regulatory action is necessary to protect California's consumers, environment, and food production and to promote the food biotechnology industry.

Let me summarize the answers to these questions that I provide in my written comments, and I've brought some of those, if you wish.

History tells us that California's longtime biotechnology policy position balances the safety of its citizens and environment with the development of biotechnology.

Second, California's current regulatory structure was defined by the regulatory requirements of an older food production system that depended on the

federal government's leadership. Food biotechnology has now made that system obsolete. The Senate Office of Research recently found that state agencies lack the capacity to address this new world. Quote: "State agencies have virtually no resources allocated to evaluate any potential adverse effects of biotechnology on the environment, public health, or consumers." End quote.

Third, the regulatory environment is becoming more complex as federal, international, and other nations respond to global developments in layered, often competitive ways. This regulatory system lacks the necessary robustness to deal with unexpected developments.

Fourth, I believe that the current scientific and economic literature reviews provided to this committee, and my own policy research, conclude that serious scientific, economic, and ethical questions remain and that equally if not more complex ones will arise as food technology develops.

Finally, as the Senate Office of Research points out, and I agree, neither of two recent studies done by the California Council of Science and Technology or by the California Research Bureau (quote) "explicitly address the issue of whether more state oversight in monitoring of biotechnology is available" (end quote). The Legislature lacks the independent capacity to generate balanced, scientific, ethical, and economic information to identify and assess food biotechnology issues that affect not only the state's citizens and environment but also its sovereignty to develop and implement alternative policies.

My written comments include a case study of how such an effort required by SB 2065 (Senator Costa) missed the marked. Legislators should address these issues by doing three things:

The Select Committee could adopt the Senate Office of Research's recommendation that the Legislature establish an independent advisory body, such as the California Advisory Committee on Human Cloning. This advisory committee could be charged with reporting to the Legislature on a yearly basis the potential impacts of food biotechnology on health, safety, and the environment, including its ethical and cultural implications, and the impact it is currently having and could have in the immediate future on California's food industry and state government sovereignty.

As part of its evaluation of the impact of the development of the industry on state government sovereignty, a periodic assessment could be made of how well federal and international regulatory activities are meeting the state's public and environmental protection and food bio-industry development objectives. Recommendations should be made on what the state's regulatory and institutional requirements and relationships should be to deal with emerging technology such as nanofood biotechnology and replacement of the old production systems.

Finally, the advisory committee could involve all stakeholders in the research and review process via advisory groups and through public forums (which is already done in Europe) to constructively gather information and to engage in public dialogs and debates about emerging issues.

That's my testimony, and I'm open for questions if there's time.

SENATOR FIGUEROA: Thank you. We will have, probably, questions later on.

SENATOR SOTO: Excuse me. What is nanofood biotechnology? Is that just another term?

MR. KOEHLER: Well, it's the latest technology that's being developed where molecules are being manipulated to create new kinds of machines and new things that are at the molecular level. So, the implications of this is that it will be possible to construct genes, for example, that are not natural or to construct other biological systems at the molecular level and then use those to change how plants and animals grow or carry out biological functions. If you look at *Science* or *Nature Magazine*, you can see some of the preliminary developments in those areas.

SENATOR FIGUEROA: Next I'd like to introduce Michael Hansen from the Consumers Union and a participant in the California Department of Agricultural Food Biotechnology Task Force. Thank you for joining us.

MR. MICHAEL HANSEN: Thank you very much, Senator Figueroa, for inviting me to address this committee. As you know, I'm a senior research associate at Consumers Union. They're the people that publish *Consumer Reports Magazine*. And as you pointed out, we've been involved in the debate here. We were also involved in the survey that the Senate Office of Research carried out as a

result of Senate Resolution 34. I'd also like to point out that I was here ten years ago—almost ten years ago—in March of 1994 and was, at that time, also arguing that California should require more stringent safety testing of genetically engineered foods because the federal government is not doing so. And there's just a few points I would like to make.

The first one is that the Food and Drug Administration does not require safety testing for genetically engineered plants. The FDA's original policy on GE plants was introduced at a press conference at an industry gathering on May 29, 1992, by then-Vice President Dan Quail, and it was introduced as a deregulatory initiative. That "policy was based on the notion," as it said in the *Federal Register* notice (quote), "that the new techniques (e.g., genetic engineering) are extensions at the molecular level of traditional methods and will be used to achieve the same goals as pursued with traditional . . . breeding" (end quote). That was in 57 FR, page 22991, on May 29, 1992. "Therefore," they said, "(they) should be regulated in the same way. In other words, (there were) no requirements for human safety testing." There were only (quote) "voluntary safety consultations." Since that time, there have been 54 such safety consultations. Except for the Calgene Flavor Savor tomato, all the consultations since then—all 53—the companies have gotten a letter similar to the one that you see in front of you. This letter went to Monsanto on October 18, 2000. It's from the Food and Drug Administration about Monsanto's Roundup Ready corn.

Now, there are two keys points that I think need to be pointed out in this letter. The first sentence in the second paragraph reads (quote), "As part of bringing the consultation regarding this product to closure, Monsanto submitted a summary of its safety and nutritional assessment of the genetically modified Roundup Ready corn on February 28, 2000." That is, they're submitting a summary of the safety and nutritional data; not all the data. And I would point out that the General Accounting Office last year released a report that basically said that this was inadequate and that full data packages should be being submitted to the agency.

SENATOR FIGUEROA: Who does that—a full report—and could we obtain it?

MR. HANSEN: No. That was the problem, is that there is no data that is required; that what's submitted to the FDA (that you can get through the Freedom of Information Act) are actually just. . . . as it says here, there were only summaries of the safety and nutritional assessment. And GAO (the General Accounting Office), who had access to all the data, also pointed out that this was a problem and that the FDA should be requiring more data.

SENATOR FIGUEROA: So, a comprehensive report has never been . . .

MR. HANSEN: That's correct. But more importantly, if you look at the third sentence in this, second paragraph, it's very key because what it says is (quote), "Based on the safety and nutritional assessment Monsanto has conducted, it is our understanding that Monsanto has concluded that the (Roundup Ready) corn (grain and forage) derived from these new varieties is not materially different in composition, safety, and other relevant parameters from corn (grain and forage) currently on the market and that (it) . . . does not raise issues that would require pre-market review or approval by FDA" (end quote).

This letter is in all the 53 letters that are sent after the safety consultations, and it makes very clear that the FDA has actually never made a conclusion themselves about the safety of these products. All they say is that the company submitted a summary of data and that the FDA understands that the company has concluded they're safe. So, contrary to what we hear in the media, the FDA has never, on record—at least to the companies—said, "We have looked at your data; we consider this stuff to be safe."

Now, it should be pointed out that in January of 2001, the FDA functionally admitted that its original policy was based on a false premise. In January of 2001, the FDA proposed what's called a "pre-market biotech notification," and that would require companies to notify the government at least 120 days before commercializing a transgenic plant variety. As part of that proposed rule, the FDA admitted that there was a difference between genetic engineering and conventional breeding and said that they would be requiring data for the first time. And the key sentence that is in the *Federal Register* from this pre-market biotech notification proposal says (quote), "Because some recombinant-DNA-induced unintended changes are specific to a transformational event (e.g., those resulting from

insertional mutagenesis), FDA believes that it needs to be provided with information about foods from all separate transformational events, even when the agency has been provided with information about foods from rDNA-modified plants with the same intended . . . trait and has had no questions about such foods . . . In contrast, the agency does not believe that it needs to receive information about foods from plants derived through narrow crosses"—that is, through traditional breeding—(end quote).

So, in other words, the agency is now saying in this new proposal that there's a difference between genetic engineering and traditional breeding and that they will be requiring data. So, this is an implicit admission that the basis for the 1992 policy is actually incorrect. Unfortunately, there were. . . . well, that notice was put out in January of 2001. There was a five-month comment period, and at the end of that comment period, the FDA had received 85,000 comments. Unfortunately, just two weeks ago in testimony, the FDA has now said the Bush Administration has said that this proposal is dead, and they will not move forward; that the present lack of regulation is sufficient. So, that makes it clear that the FDA is not requiring safety testing.

Now, the final point I'd like to make is that global agreement has been reached on what constitutes proper safety assessments of foods derived from genetically engineered plants. And I would just point out that earlier this year, the Codex Alimentarius—that's the food safety standard-setting organization of the UN—they had a four-year Ad Hoc Task Force on Foods Derived From Biotechnology and the last two years they've come to agreement on three documents. Two of those documents, one is a (quote) "Draft Guideline for the Conduct of Food Safety Assessment of Foods Derived From Recombinant-DNA Plants." The other is a "Draft Guideline for the Conduct of Food Safety Assessment on Foods Produced Using Recombinant-DNA Microorganisms." These are very detailed documents. These documents are at Step 8 in the Codex procedure, and next week at the Codex Alimentarius Commission, they will probably be accepted, and when they're adopted by the full Codex Alimentarius Commission next week, this is important because in the case of trade disputes, the World Trade Organization considers that in terms of food safety, the standards

or guidelines of Codex Alimentarius are deemed to be the global science-based standards and thus immune from trade challenges. That is, they are not considered to be (quote) "non-tariff trade barrier."

So, at present, since we do not require safety data, these very complicated, detailed safety assessment that has been presented at Codex Alimentarius, once they're accepted, any country in the world could basically pass national legislation, require all the safety data, then turn around and reject products coming from the U.S. because they say they do not meet these stringent standards. Under the WTO, if the U.S. were to challenge that, they would lose that challenge.

So, in summary, what I would suggest is that since the FDA does not require safety testing and also since there is a problem with potential trade, that California needs to have more rigorous standards. Just as the California EPA pesticide law is more stringent than the federal law, we feel that California should require appropriate testing of GMOs, and the kind of testing is what's laid out in these procedures that will be adopted next week at the Codex Alimentarius Commission. That will then mean that you will not suffer trade challenges from other countries.

Thank you.

SENATOR FIGUEROA: So, you'd have to duplicate the same recommendations that they make.

MR. HANSEN: Yes. We've actually suggested to the FDA on this pre-market biotech notification that we did extensive comments and said, "Here's the standards you should meet." They are the ones that are being laid out by the Codex, and I can submit those to you if you would like to see the draft guidelines for both sets.

SENATOR FIGUEROA: Yes, please.

MR. HANSEN: They're very comprehensive.

SENATOR FIGUEROA: Yes. And Mr. Hansen, is it appropriate for the State of California to do that, to adopt these similar suggestions and recommendations?

MR. HANSEN: Yes. I believe that it is appropriate, and you'll hear from the next speaker that you will not have a problem with federal preemption on this issue. California has done it before. You have stricter pesticide standards than

the federal government, and that's fine, and you have Proposition 65, which is more stringent than the federal standard. So, I think that California can take that action, and if you do that, you can, in part, not only protect consumers in this country, but protect export markets so that your products won't be potentially rejected by foreign countries.

SENATOR FIGUEROA: Thank you, Mr. Hansen. Senator Soto has a question.

SENATOR SOTO: You might have said this, but I could have missed it. Who determines the standards, and how do we know about the safety of this?

MR. HANSEN: You mean the standards of Codex Alimentarius?

SENATOR SOTO: Yes.

MR. HANSEN: There was actually a four-year process, and all the countries that belong to the United Nations could go to these meetings. They were very open. They were held for four years in Japan. There were also working groups which looked at the safety standards that were for plants. There was a separate working group that looked at what the appropriate standards should be for foods derived from recombinant-DNA microorganisms. They also had these global. . . . the World Health Organization and FAO held three expert consultations on safety assessment. One was on general safety assessment. A second was on a proper way to test for allergenicity for foods derived from genetically engineered crops. And the third was how to do proper safety assessment for foods produced using recombinant-DNA microorganisms. That fed into this whole global process. The U.S. was there at these meetings. Many countries from around the world were there. And actually, we also participated as part of Consumers International.

SENATOR SOTO: How do we know that the public approves of this? Have there ever been any polls?

MR. HANSEN: For what?

SENATOR SOTO: For what we're trying to do here.

MR. HANSEN: Yes. Actually, if you look, the proposal that the FDA put forward in 2001, where they suggested requiring data, they got 85,000 comments from the public, and the vast majority of those comments said, "We would like to have safety testing and labeling." In fact, the reason that they came up with that

regulatory proposal was, in 1999, they held three meetings throughout the U.S.: one was in Washington, one was here in. . . . well, was in Oakland, California, and the third was in Chicago. And they also did a notice in the *Federal Register*, and again, with that, there was over 100,000 comments, and the vast majority of the comments, they admitted, were saying that there should be strict regulations and also labeling.

SENATOR SOTO: Do you think 100,000 is enough compared to the 39 or 40 million people that there are in the United States?

MR. HANSEN: Well, when you look at the number of comments that come into a regulatory agency for things that are published in the *Federal Register*, those are very huge numbers. I would just point out, in 1986, the FDA decided to require labeling of irradiated foods, in part because 5,000 people sent in comments. So, here, there is many times that number.

SENATOR FIGUEROA: Thank you, Mr. Hansen.

Our next panelist is Andrew Kimbrell from the Center for Food Safety.

Mr. Kimbrell, thank you for joining us today.

MR. ANDREW KIMBRELL: Thank you very much, Senator Figueroa, and thank you to the committee for having me here. It's a real pleasure to speak with you today.

I've been a public interest attorney for twenty years working on this issue in Washington. We have offices both in Washington and in California, the Center for Food Safety. So, part of what I want to talk about today is sort of my experience in the belly of the beast in Washington to answer that question: Are federal regulations adequate?

Quickly, though, I'd like to also respond to Senator Soto's question, which is that there's been numerous polls in virtually every magazine: *Time* magazine, *Newsweek* magazine, *New York Times*, CBS, all those polls. And they show very consistently that anywhere from 85 and 92 percent of Americans want labeling and testing of genetically engineered foods. They're remarkably consistent, these polls, including the industry's own polls. So, I don't think there's much dispute about what the people want, and the question is how to get that enacted in some fashion. I think that's what we're all here about.

Having said that, the first thing I want to say about federal regulation of genetically engineered foods is that we have yet to pass our first law dealing with any issue having to do with the human health or environmental concerns of genetically engineered foods. Despite twenty years of attempts by Representative Al Gore, by Kastenmeier, then by Senator Gore, most recently by Senator Boxer, the industry has simply been too strong. So, we do not have legislation. We do not have national legislation on any of the issues that we have heard and you will be hearing about today. Zero. None.

So, what's happened? How do we have any regulation at all? Well, what happened is, in the absence of any kind of federal legislation, all these issues have been shoved down to the regulatory agency level. So, we now have eight regulatory agencies regulating biotechnology into twelve different statutes, and none of these laws were passed with biotechnology minds. As a matter of fact, most of them were passed in the '70s before we even thought biotechnology would happen. So, the agencies are put in a very difficult position at the federal level because they're dealing with essentially a biological pollution problem; that is, we are seeing genetically engineered organisms into the environment. They're released into the environment, and this is very different than a chemical pollution problem. Mind, if you have sewage sludge or you have the contamination of a river through toxins, that's different than actually having a living organism, living pollution, out into the environment. Unlike chemical pollution, it will not diffuse over time; it will not dilute. Like the chestnut blight or Dutch elm disease or the killer bees that are moving their way up from Mexico, there's no way to stop it.

The biological pollution is a unique problem. We have no laws whatsoever, so what we're trying to do is actually regulate biotechnology under these chemical pollution statutes, and this leads to some remarkable anomalies. Right now, genetically engineered fish—I know there's been pending legislation here in California on genetically engineered fish—that's being regulated at the federal level as a new animal drug.

SENATOR FIGUEROA: We're progressive here in California.

MR. KIMBRELL: So, some of them try to say, because they don't have any legislation to go by, what they're basically saying is we're going to actually regulate

a fish as if it were a drug, because they don't have any legislation. I really want the Legislature in California to understand this. This is what's happening, these anomalies, because we don't know what to do with these genetically engineered plants.

SENATOR FIGUEROA: I sense that you're urging us to take a lead on these issues.

MR. KIMBRELL: I am indeed.

Genetically engineered plants, we're actually treating them as pesticides. Now, when FFR was first passed in '72, no one thought you were going to call a plant a pesticide. Pesticides are something you put on plants. But now, because we don't have any legislation federally, we have to actually treat plants, genetically engineered plants, as if they were pesticides. And we're treating genetically engineered microorganisms under TSCA as if they were chemicals, and they're completely different.

So, these are the anomalies that happen when you don't have appropriate legislation. So, indeed, the federal regulation is based on the anomalies, and it's been grossly inadequate.

SENATOR FIGUEROA: Is it education with a combination of lack of education also?

MR. KIMBRELL: Yes, I think is. I mean, a lot of legislators were polysci majors and had trouble getting through biology in high school and college; and so, sometimes when you talk about agrobacterial vectors and viral promoters and the variety of retroviral vectors as well . . .

SENATOR FIGUEROA: We can always learn though. (Laughter.)

MR. KIMBRELL: So, I think that is an issue, yes, Senator. I think that the important thing also to see as we've come out of this is, as Michael was saying, the 1992 policy, which was essentially a policy that was written by the industry—Monsanto's chief attorney, Michael Taylor, wrote this policy—then was brought into the FDA at the end of the Bush Administration and basically the same policy that he and others had written for industry and made it international policy. But the '92 policy is what. . . . if the Monsanto spokesperson were here today or a

spokesperson from the USDA, they would say, "This is our regulation, the 1992 regulation."

But I would urge you to look at a federal law case that I litigated, and this is *Alliance for Bio-Integrity* vs. *Shalala*, which is 116 Federal Supp. 2d 166, where a federal court in a formal ruling unchallenged, unappealed, said that these are not regulations, and I quote now, "These are not regulations, and they're not binding on any party." They are not regulations and not binding on any party. So, we have no federal regulations, at the FDA level anyway, on biotechnology at all. Not only do we say there's no mandatory testings or mandatory labeling, there isn't any regulations at all that are mandatory.

And this has enormous importance legally, I think, for your considerations here, which is because of this law case, this holding of the court, there is no preemption issue. The State of California is virtually free to pass any legislation it wishes without any fear of federal preemption, because as the court has recognized, "There are no federal regulations that we can conceivably preempt you from doing whatever you want on labeling and testing in the State of California."

And by the way, we've seen bans on genetically engineered fish already in Maryland, in Oregon, in Washington, a number of state legislatures are passing, and, of course, these are not being challenged for the reason that there is no basis for preemption because there are no binding federal regulations in most of these areas.

SENATOR FIGUEROA: Yes, Senator Soto.

SENATOR SOTO: This may be off the wall, and you may not be able to answer it. I have a really severe problem in my district, and this is kind of personal because my district's contaminated with perchlorate. Do you mean to tell me that there isn't anything that we can do to minimize the danger of perchlorate in the vegetables? Because now we're finding it in the lettuce. Eventually, we're going to find it in corn or whatever else is out there in agriculture. Is there anything being thought of or done or worked on that would decrease the danger of these pollutants being in the aquifers so that it won't be going into the edible vegetables that we're growing? It's really traumatic for me to think that that's happening in my district and there's nothing we can do about it.

MR. KIMBRELL: You know, Senator, that's a pesticide issue and a very, very important one. Having spent . . .

SENATOR SOTO: It's not pesticide; it's perchlorate that's been in manufacturing. It's a pollutant that. . . . it's a propellant—what do they use it for?—to propel bombs and rockets and so forth, and it's gotten into the aquifer. Now it's getting into the vegetables. Everywhere I've asked I'm stumped. There's nothing that is being done or studied on how to reduce the risk of this being in the aquifer. I just was wondering if you have any knowledge.

MR. KIMBRELL: We have a public interest law firm that deals a great deal with organic _____. There's a number of different kinds of general pollution problems, and we can certainly look that up and do what we can to help you with that problem and give some information to your constituents, Senator. We'd be happy to do that.

SENATOR SOTO: I really would appreciate it if you could.

MR. KIMBRELL: We'll definitely do that, and I'll get my legal team to look at that here in California, as well as . . .

SENATOR SOTO: Okay, because that would be something really, really enlightening in my district, now that we know that there are forty other areas in the United States that are contaminated with this rocket fuel.

MR. KIMBRELL: You know, it's an important cautionary tale, also, as we look to this new technology and this living pollution because we're now finding with genetically engineered corn it's almost impossible to find nonpolluted corn for organic purposes. And we're finding new research saying that these genetically engineered fish, just a few of them released into the environment, can cause the extinction of these species in very few generations. So, these are sometimes intractable problems that we need to try and address before they happen. We're talking here about a problem that we need to address after it happens. It's always much more difficult to address these problems after they've happened.

SENATOR SOTO: [Inaudible.]

MR. KIMBRELL: Well, first they came from the tomato, then they came from the chicken. Certainly they'll come after us, Senator.

I'd like to maybe conclude this just by talking about another kind of preemption that we need to worry about: What about this WTO challenge? Could this preempt anything? And we've already, I think, determined that there's virtually nothing nationally that's going to be a serious preemption challenge. Either they don't exist at all or they're so obscure, because they're trying to apply a chemical pollution statute to these biological organisms, that they would never result in preemption.

It's important to realize that the WTO challenge has nothing to do with labeling and has nothing to do with testing. It is a very narrow challenge based in a science-based attitude towards the moratorium that they have there. And this moratorium is time-based. What these countries have said is, "We need time to get adequate regulations in place." Would that the U.S. government said the same thing, by the way.

SENATOR FIGUEROA: Isn't it more based on politics rather than on science?

MR. KIMBRELL: No. As a matter of fact, I would say that the European position is based on science, and I would call our own regulation faith-based, or profit-based. (Laughter.)

SENATOR FIGUEROA: Okay. Profit-based.

MR. KIMBRELL: Which is a faith for some, Senator.

And it's very important to realize how narrow this challenge is. I would view it—and Michael Hansen earlier was talking—we sort of view it as a "slap suit." We don't believe that a moratorium is the kind of regulation that is envisioned under the FDA Sanitary Agreement or the Technical Barriers to Trade Agreement. They're using some very technical things here to try and get a point across. It's really a political point.

SENATOR FIGUEROA: That's what I said.

MR. KIMBRELL: And you're absolutely correct. It is a political one by the U.S. government to try and use some leverage here, and it would have no preemptive. . . . because of the very narrow aspect of this in these agreements, it would have no preemptive. . . . if anything that the Legislature here would pass on labeling and testing, environmental testing would be. . . . this would have

absolutely no effect on it whatsoever. So, I can certainly tell you with great confidence that there would be no preemption either from federal or from international law at this point to California doing whatever the will of the people here would say it should do, which we believe would be the labeling and testing of these foods.

SENATOR FIGUEROA: Thank you. I look forward to working with all of you gentlemen. Thank you for your testimony. Appreciate it.

We've been joined by Senator Karnette, who represents the Port of Long Beach and LA. I know these issues have been of great interest to her. We've traveled to many countries where we've discussed similar issues. Thank you for joining us.

MR. KIMBRELL: Thank you again.

SENATOR FIGUEROA: Panel 2. This panel will explore the potential impacts of the increased use of biotechnology on California's agricultural economy. Agricultural exports are a major sector of the California economy, accounting for 17 percent of the U.S. exports and accounting for more than half of the nation's fruits, nuts, and vegetables.

As the number one export state in the nation, should we be concerned about the growing rejection of GM crops and food worldwide? And are there implications for organic farming and industry; that is, the fastest growing in the agricultural sector in California? These are some of the questions that our panelists will discuss and explore with us this afternoon.

Thank you for being here with us. If you'd like to introduce yourselves, then we will proceed.

MR. ZEKE GRADER: My name is Zeke Grader, and I'm the executive director for the Pacific Coast Federation of Fishermen's Associations. Glad to be here.

SENATOR FIGUEROA: It's nice to see. I haven't seen you for a while. How've you been?

MR. GRADER: Good, thank you.

MR. BRIAN LEAHY: I'm Brian Leahy. I'm the president of California Certified Organic Farmers based in Santa Cruz, California.

SENATOR FIGUEROA: Thank you.

MR. BRYCE LUNDBERG: My name is Bryce Lundberg from Lundberg Family Farms. We produce organic and specialty rice in the north valley here in California.

MR. DOLORES HUERTA: I'm Dolores Huerta, the co-founder of the United Farm Workers and vice president emeritus.

SENATOR FIGUEROA: Okay. I understand Mr. Lundberg will be first.

MR. LUNDBERG: Thank you for inviting me to come today to share my concerns and my opposition to the unregulated introduction of GMOs into California agriculture.

We produce organic and specialty rice and rice products on our farm here in Northern California. Our family operation is one of the largest organic rice companies in the United States, supplying the majority of organic rice to the natural food retail sector. We also export our organic products to Japan and to the European Union.

We request that the State of California apply regulation and restrictions to the introduction of GMOs beyond that of the USDA, EPA, and FDA, which I believe are woefully inadequate at the farm level—practically nonexistent. We have serious concerns that our ability to grow, process, and market products will be unnecessarily jeopardized by the introduction of GMOs. In the Midwest, crops such as corn, soy, and canola have experienced significant contamination of non-GMO crops with GMO crops. We think it makes good business sense to regulate GMOs before they enter our state and create a difficult atmosphere to grow and market California's diversity of crops around the world.

Here's what's so troubling, what makes us feel so vulnerable: It is the approach that biotech companies take in bringing their products to farms, to the agricultural marketplace. I asked a biotech representative how their company thought that they could guarantee that the pharmaceutical GMOs that they were planning to produce would not contaminate the food supply as is required by USDA and FDA, because the herbicide-resistant and Bt GMOs that they produce have not stayed where they've planted but those products have moved onto neighboring fields and across the agricultural landscape.

SENATOR FIGUEROA: I'm sorry to show my lack of knowledge, but how do they travel?

MR. LUNDBERG: Well, I would say it depends on the crop, but if they're put into airplanes, the airplanes are not so precise and they move into neighboring fields and across neighboring lands. Pollen will move the genetic material from one field to another. Insects can move the material from one area to another. They can move in the granaries after they've been brought into a granary, and then they're co-mingled and mixed. And if seed is taken out from portions of an operation that has been contaminated and then moved to dozens or hundreds of fields, that contamination then moves to those fields. And so, it has really moved well beyond the fields and the farms where it's been planted in the Midwest, here in the United States.

SENATOR FIGUEROA: Thank you.

MR. LUNDBERG: The response, though, that the representative from this biotech firm gave me was what is so concerning to us. She said, "The nonpharmaceutical GMOs are not intended to stay where they are planted, and they are not required to stay where they are planted." This attitude toward their products is really unacceptable to me, and I hope it's unacceptable to you, that their products are not intended to stay where they're planted and not required to stay where they're planted.

We produce food for customers in the U.S., Japan, and Europe who do not want GMOs in the food that they eat. Don't you believe, as I do, that in California it is a realistic expectation that we should have the ability to continue to produce products that meet our customers' expectations without the unwanted contamination from GMOs?

California's farmers should not have to be the unwilling recipients of GMO contaminations. We should not have to make unilateral accommodations in order to protect ourselves from the movement of GMOs. We should not have to begin GMO testing programs and begin more rigorous isolation programs in order to maintain our markets and customers that are jeopardized by the entry of the GMO products into our farming regions. In California we go the extra mile to make sure that in agriculture and in life that diversity is protected and that one agricultural

commodity's interests are not allowed to detract from other commodities' ability to produce their crops to meet the expectation of the marketplace.

California produces the highest diversity of crops and the highest quality crops anywhere in the world. We produce crops that are sold around the world to the highest quality-conscious buyers. The last thing we need is the introduction of a product that will limit the marketplace that we can sell our crops. In California, we do not suffer from the lack of productivity. We're the most productive farmers in the world. We suffer from the lack of additional markets for high-quality products. Why would we ever choose to willingly allow something to come into our farms that could limit where and to whom we can sell our products?

I strongly urge the California Legislature to regulate GMOs as they are introduced into California in order to protect the farms, processors, and consumers who choose not to grow, process, or eat the products of biotechnology.

Here's a few ideas that I would suggest.

SENATOR FIGUEROA: Thank you. I was just going to ask you for that.

MR. LUNDBERG: I ask that you declare GMOs to be restricted materials subject to the agricultural permitting process currently in place in California for every farm and farmer.

SENATOR SOTO: Can we legislate that?

MR. LUNDBERG: Well, those permits are already required. I think the Legislature could find a way to include GMOs as a restricted material.

SENATOR SOTO: And not everybody has to do use GMO's.

MR. LUNDBERG: Correct. If you don't want to use GMOs, then you wouldn't be subject to that.

The restricted material use permits allow county ag personnel to monitor the use of restricted materials so that they are used correctly and do not adversely affect neighboring crops, the environment, or other sensitive sites.

Second, I ask you to prevent GMOs from being applied by agricultural aircraft. Crop dusting companies serve a great purpose in California, but allowing GMOs to be spread by aircraft is too great of a risk.

Third, I ask that GMOs be evaluated individually for drift and gene movement. If there is a likelihood that the product will not stay where it is placed,

then it should not be used in California. California has such a diversity in agriculture, and we do our best to prevent one crop and material from a negative impact on others. It only seems consistent and appropriate to prevent the introduction of GMOs if they offer potential for drift or gene movement.

And fourth is related. Farms that grow GMOs should be required to implement drift prevention plans as part of their restricted material use permit process. This should include specific buffer zones on their property rather than requiring neighbors to institute them on their property.

Then finally, liability and responsibility needs to be addressed. No one is prepared to answer who is responsible if my farm were to be contaminated: the user of the GMO or the maker, or both? Right now the GMO companies say, "What's the problem?" Generally speaking, they see no problem with their product damaging other farmers' crops; until, that is, that the farmer decides to keep his or her own seed, and then, generally, they're opposed to that farmer using that seed if it's been contaminated with their genes.

The issue of liability and responsibility for damages needs to be established right here at the beginning. I'm just one of thousands of farms and farmers in California who are very vulnerable to the unrestricted introduction of GMOs. I urge you to use your powers as the Legislature to protect our farms, our food, and our consumers from the unwanted entry of GMOs by enacting needed regulation that will require these products to stay where they are placed and not contaminate the agricultural landscape and marketplace.

Thank you.

SENATOR FIGUEROA: Thank you very much. Appreciate your comments and statements.

You mentioned in your opening statements that you had a great dependency on overseas exports for your crops. What is the percentage, if you're at liberty to share that? And also, if you could break it down to how many of them do not want the GMO product.

MR. LUNDBERG: Well, our company is predominantly a U.S. sales-based company. Our export sales are around 10 percent of our company's business, to Japan and to Europe, and our Japanese customers and our European customers

are very much against GMOs being included in the products we send. I was at a food show, the BioFach show, in Germany this year, and I had one customer, or potential customer, come to us and say, you know, "Why is it that you think you can sell organic goods here in Europe? Because all your organic goods are contaminated with GMOs, and they are prohibited here." Fortunately, I was able to tell them that in our specific area, in our commodities, that we are yet to be contaminated and hope to never be contaminated by GMOs and, at this time, we can sell into those areas without added difficulty, but if we would experience the same type of contamination that has happened in the Midwest, we would have significant difficulty selling into those areas that don't want the GMOs.

SENATOR FIGUEROA: Do you incur additional costs by trying to prevent the GMO contamination?

MR. LUNDBERG: Well, at this time—you know, we grow rice here in Northern California, and GMO rice hasn't been commercially produced here—we're not being asked to provide that sort of documentation. But I would say it will come quite quickly. One of the reasons it's not here is that because it's not commercially produced, the test to test for those events aren't available. If those products become commercially produced, then I imagine the tests to find those genes will become available, and then our customers will ask for those tests to be done, and then we will incur additional expenses.

I am aware of a company we sell our rice to in the Midwest that's really a soy-based company, and they incur hundreds of thousands of dollars of testing to assure their products do not contain GMOs. It's very unfortunate. It's the sort of thing we would prefer not to do.

SENATOR FIGUEROA: Thank you for your time.

SENATOR SOTO: May I ask him one more thing?

SENATOR FIGUEROA: Yes.

SENATOR SOTO: Is that what you believe to be the main threat, just trying to avoid contamination, trying to avoid this?

MR. LUNDBERG: It would be my preference if they didn't come to California. I mean, that would really be my preference. If they come to California, then by all means, I don't want them on our farm, and as the state of affairs are

right now, there's nothing that says it's wrong for those genes to be moving across farm borders.

SENATOR SOTO: And I meant it—I'll be glad to introduce that legislation.

MR. LUNDBERG: That would be fantastic.

SENATOR SOTO: I really will. I meant it.

MR. LUNDBERG: Thank you very much, Senator Soto.

SENATOR SOTO: I think we ought to just keep them out.

MR. LUNDBERG: Would love to talk with you at a later date to discuss how we can do this.

SENATOR SOTO: You can come to see me at any time.

MR. LUNDBERG: Thank you.

SENATOR FIGUEROA: Next we're going to hear from Zeke Grader of the Pacific Coast Federation of Fishermen's Associations, an organization concerned about the commercialization of genetically modified fish.

Thank you for joining us this afternoon.

MR. GRADER: Thank you, Senator Figueroa and Senator Soto and Senator Karnette. Good to be here.

My organization is a trade organization of commercial fishing men and women up and down the Pacific Coast. We are, in fact, the largest organization of commercial fishermen along the West Coast. I also represent the nonprofit organization known as the Institute for Fisheries Resources, which one of its main focuses has been on the safety of our seafood.

The issue that brought us to become concerned with the whole matter and the whole debate of genetically modified or genetically engineered foods had to do with a petition that was filed approximately two years ago with the U.S. Food and Drug Administration by a Massachusetts-based biotech company called Aqua Bounty. And that company proposed before the FDA—petitioned the FDA—for approval to do a genetically engineered Atlantic salmon. This salmon would include the genes of an Arctic pout and a West Coast Pacific—a chinook salmon—in order to make it grow much faster to bring it to market quicker; similar to what we're seeing right now going on in much of the beef and poultry industries. This fish would grow approximately five times quicker than a normal salmon, and these

Atlantic salmon, the target customers for the Aqua Bounty, would be the salmon aquaculture operations that occur right now in Northern Europe, in North America, both in Maine and Nova Scotia, as well as British Columbia and the State of Washington, and, interestingly enough, in Chile in the Southern Hemisphere, which is now the largest producer of farm salmon in the world where salmon are not native to the Southern Hemisphere.

The concern, of course, is that these fish right now—Atlantic salmon—regularly escape from their net pens. In fact, the escapes of Atlantic salmon along the British Columbia coast are attributed with the demise of the Pacific pink salmon in that province because of infections from sea lice carried by the Atlantic salmon. Atlantic salmon are also now breeding successfully in British Columbia streams. Now, these are basically an alien species. Atlantic salmon are not native to the Pacific Coast, hence their name Atlantic. They are threatening other Pacific Coast stocks, and even on the East Coast, the Atlantic salmon, the farm raising operations there, have caused the demise, the loss, of Norway's wild Atlantic salmon populations, and wild Atlantic salmon populations in most of Northern Europe and North America are now threatened, in large part, because of these salmon farms.

Now, this is not even with genetically modified fish. We don't know what would happen with these fish, which escape regularly, if they get out there and all of a sudden we have fish that can grow to five times their size or five times quicker. Andy Kimbrell, who was before us in the last panel, I think mentioned some of the problems, but certainly the concern is, if they begin breeding with remnant wild populations on the Atlantic Coast, they could cause the extinction of the wild Atlantic salmon populations. And who knows what type of damage they could do here on the West Coast to our Pacific salmon runs which are both important to industries from here in California up to Alaska; but also, we've been spending billions of dollars both in the Pacific Northwest and even here in California trying to recover some of those populations. It could be completely upset by this.

Now, the problem, of course, with the FDA's regulation is it's really not a regulation. The FDA is looking at the Atlantic salmon petition by Aqua Bounty in terms of a veterinary drug. Not in terms of human health, not in terms of impacts

on the environment, but as a veterinary drug. Something like you'd inject with your dog or something, except I would save my dog from that. But nevertheless, this is what they're looking at. There is no inspection. So, your question was . . .

SENATOR BETTY KARNETTE: I don't understand. Would you go over that again? I'm not clear. I've heard about the salmon. I'm familiar with the salmon and the wild salmon.

MR. GRADER: What the FDA is looking at in the petition from Aqua Bounty is the application of Aqua Bounty's process in terms of a veterinary drug. They're not looking at it in terms of human health. They're not looking at it in terms of potential impacts on the environment. That's how it's being assessed.

SENATOR SOTO: Well, what is a veterinary drug?

MR. GRADER: A veterinary drug would be something that you would give to an animal. So, they're looking at in terms of this process as if it were a drug for an animal, not in terms of human health where people would be eating them, not in terms of potential impact on the environment.

SENATOR KARNETTE: And this drug will do what? What is the purpose of the drug?

MR. GRADER: Well, the drug is what they're talking about. The provision that they're looking at it under is in the terms of being able to do the gene splicing to make these animals grow quicker. So, in other words . . .

SENATOR KARNETTE: Oh, I see. The drug will make them . . .

MR. GRADER: Well, it's under those provisions that the FDA is analyzing it. So, there is really no inspection for either looking at human health impacts or impacts on the environment. Now, there may or may not be human health impacts, but we'll never know until somebody examines them for that, and FDA is not doing that. There may or may not be impacts if these things get out in the environment and impact our wild fish. We don't know because, again, nobody is looking at that. And that's the danger, and that, I think, really raises the issue of why we need to have regulation here in California.

Now, in partial response to this, the states of Washington, Oregon, and Maryland have taken action to ban these genetically modified fish until at least something more is known about them.

SENATOR SOTO: How do they do it? By monitoring?

MR. GRADER: Well, those states basically prohibit the introduction of genetically modified fish into their state waters to the extent that they can control that. I mean, somebody could slip them in.

SENATOR KARNETTE: If they come from other states . . .

MR. GRADER: If they come from other states, that's exactly the problem.

SENATOR SOTO: Then they breed and they pass it on.

MR. GRADER: Yes, they could very well or compete for habitat or, if they're growing much quicker, become predators on our wild fish.

So, this is the problem. There's all these unknowns, and nobody is looking at that. So, I think it is proper for the State of California to do this.

Now, last year we requested the. . . . there was legislation introduced—unfortunately, that legislation died—by Senator Sher and by then-Assemblywoman Virginia Strom-Martin, aimed at looking at both of these issues. Unfortunately, that legislation died in the eleventh hour in the Assembly. It never did get the hearing. So, I think this year Senator Sher has his SB 245 which could address some of those aspects. But I think most importantly, I think what is most disturbing is the failure on the part of our Department of Fish and Game and our Fish and Game Commission to really take aggressive action when everybody now in fisheries is preaching the use of the precautionary approach. In this particular instance they've thrown precaution to the wind.

SENATOR SOTO: Has this presentation been made to the Fish and Game Commission?

MR. GRADER: Oh, yes, it has. Unfortunately, I think there was pressure either from the Governor's Office or someplace else not to enact strong regulations, under pressure from the biotech industry. This is the problem, and I think it needs to be addressed. Moreover, I think there's also the issues of labeling. We need to have some mechanism for the labeling of these fish, to give you an example, so that if there are problems, if there is consumer resistance to genetically modified fish as there is in Europe right now—resistance to genetically modified products—at least people can distinguish. The last thing we want to have happen, particularly for us in California now, for the first time in over 25 years,

we're reestablishing our markets in Europe for our wild salmon from California and from Alaska, and that's because people there have become much more food conscious, and they're rejecting much of the farm fish coming out of Norway and the rest of Europe, you know, opting for our wild fish. And they should. It's a better tasting product. It's better for you. It's better in every way. It's better for the environment. Unfortunately, if we don't have ways to have those fish properly labeled, the consumer will have no way of knowing.

SENATOR KARNETTE: How are we going to label? How do you label to know where a fish came from?

MR. GRADER: Well, we are right now. In fact, there is under the farm bill of last year, there are going to be regulations in place to call for the regulation—or the labeling, excuse me—of fish by both, whether they're farmed or wild, and what country they're from. Now, it's not a perfect system.

SENATOR KARNETTE: That's what I was going to say. If they're inbreed, I don't . . .

MR. GRADER: Well, that's the problem, and that's what we get to is the inbreeding. From California's standpoint, I think there's almost three tiers of what we should be looking at. Number one is a prohibition on these fish, at least until we know they're safe and there's been some good inspection.

SENATOR KARNETTE: And you're saying prohibit?

MR. GRADER: Prohibit. Second would be label to the extent that they come into our marketplace so we know whether or not; because most of the genetically modified ones will be coming from farms, not from the wild, so we should know that. And then the third aspect is a clear chain of liability, such as Mr. Lundberg suggested, on the agricultural products. These people, these chemical companies, biotech companies, and people that are pushing this stuff, have to be held liable if there is a human illness, if there is damage to the environment. We have to have that, and right now, our USDA is fighting that.

SENATOR SOTO: Why?

SENATOR KARNETTE: But to prove that there's harm is not exactly easy.

MR. GRADER: Exactly, but at least we need to know where those fish did come from. If we have that, if we have labeling and if we have, then, liability, if we

know where the fish were from—we know from the labels—if a person went in to, say, Trader Joe's and they have a choice right there, labeled whether it's farmed or wild, and it happened to be the farm fish they picked up and, whoops, they got sick from it, it's not going to then . . .

SENATOR KARNETTE: But even proving that they got sick from. . . . I mean, this is a very complicated . . .

MR. GRADER: Sure, but it's a problem anytime with food poisoning, but we can trace it to that, the same way we have if people who get sick with drugs. At least we can try and trace it back to that. Nobody's saying it's going to be easy, but I think this is a much better process. That's what I would suggest. I think the state clearly has a role here in the regulation.

The last thing I want to say is that I am not quite so sanguine about the WTO and what might be attempted there; and that is, right now I think the U.S. is trying to use that as a way to try and push our products into the European markets despite the rejection by the Europeans of those. I do not want to see some biotech company from this country or someplace else trying to use the WTO to undo regulations that we have in place to protect human health or protect our wild fish.

So, I think from that standpoint, I think probably a fourth step should be taken here with the first three I addressed, and that is for this state to speak very loudly in one voice to the U.S. government, to the USDA, to the U.S. Trade Representative, that when you negotiate treaties, or negotiate these fair trade agreements and negotiate and develop rules through the WTO, we want to make sure our health and safety regulations—national health and safety regulations, state health and safety regulations—are upheld and that they don't try and use the WTO as a way to thwart them.

Thank you.

SENATOR SOTO: Will that be delineated then in what way to safeguard?

MR. GRADER: I think probably in a resolution strongly to the U.S. government, because frankly, I think right now—and this is my own opinion—is that the way the USDA is behaving, the way the U.S. Trade Representative is behaving, even the way some in the Administration are behaving about their

strong-arm tactics on genetically modified foods, is that they basically are reestablishing or reinventing the Ugly American. I don't like it, and I think it's going to hurt some of us who are trying to grow fish or harvest. . . . or grow products or harvest fish in a sustainable manner without using GMOs because I think we're going to see reactions on the part of the world against not only GMOs but anything American if we're not careful.

So, I think, again, a strong statement from this Legislature, you know—*Hey, knock it off*—to the U.S. government and let's work with these other people and stop trying to strong-arm the rest of the world to accepting our products that we even have doubts about.

Thank you.

SENATOR FIGUEROA: Thank you, Mr. Grader.

For your information, we have sent letters, and we have passed a number of resolutions. I think what you're asking is that we continue to play a vital part. This committee will be monitoring the efforts of the WTO closer, and we'll be working with them on a closer basis.

Thank you for your cooperation. We'll be counting on you for your support.

MR. GRADER: Thank you.

SENATOR FIGUEROA: Next, Mr. Leahy.

MR. LEAHY: I'm Brian Leahy. I'm the president of California Certified Organic Farmers. We are a nonprofit collection of organic farmers and processors throughout the entire State of California and, actually, throughout the country. I'm also a member of the California Food Biotechnology Task Force.

I have seen the organic industry grow. The first year I grew an organic crop we were about a $78 million industry. Today we're about 13 billion. We have grown because we listen to consumers; we listen to the people that buy our food. Our consumers have been very clear: they do not want genetically modified food. They don't want to serve it to their loved ones. They don't want to eat it themselves.

You know, it's funny in this culture but not everyone values food, but the organic consumers have really remembered what food is about. It's what

nourishes our body and nourishes our loved ones, and they've been very clear: *We do not want to take this risk of an unproven, unknown technology.*

It's interesting in the insurance companies, they will not insure these GE products. They're in the business of assessing risk they're not willing to insure. When you buy a seed from, like, Monsanto, what happens is you actually license this technology and you sign a contract, a licensing agreement. Monsanto pushes the liability, the potential liability, to the farmer because they don't want it. I mean, the reality is, this is risky stuff. Industry knows it; insurance companies know it. The largest bank in Europe—Deutsche Bank—they won't get into loaning money to this industry because they say it's too risky.

So remember, what we're talking about is our food. Why would you risk this when we don't have to? Technology's not giving us better food. What it is, is giving us an increased way to factory farm.

I was a farmer. I grew organic rice for a lumber consortium in 1980, but I grew corn and soybeans in the Midwest when this technology was introduced, and I was also a Legal Aid attorney. What I saw was devastation in farm communities, and this is part of what this conference is about right now, is what will happen to California ag when we allow this technology into the state? Right now it's in corn and cotton. It's not really in rice; it's not in all our fruits and vegetables. It is in test plots. The University of California is testing this stuff. They have private tests all over the state. But the farmers, like one of our members—the largest lettuce producer—when approached by a biotechnology company said, "We don't want any part of it. We're scared of it because of market rejection." And that's what we deal with as agriculturists. We have to sell to a market.

The European market has said no. Just as an indication, corn and soybeans, something like 70 to 75 percent of the soybeans are now GE soybeans, which means people that are eating processed food are eating this material and they don't even know it. And in corn, 30 percent or so is GE. European markets said no to GE. The consumers say, "We don't want it." From 1996, U.S. corn sales was about 300 million. By 2001, it was less than 2 million. California is an export market. We grow some 300 crops, and we could very easily lose many of those markets, many of those crops.

I was with Bryce in the German trade show, in BioFach. People are upset about this. The Europeans, they want to know why we're ramming this down their throats. They want to know why we don't stop, slow down, and do some hard science; take a look at what's going on.

SENATOR FIGUEROA: Let me interrupt you. I hear all of you asking the California Legislature to impose a moratorium on GMO crops. Would there be any condition where you would feel that it would be appropriate for that moratorium to be lifted?

MR. LEAHY: Well, if you impose the moratorium, that would be great. And all we have to ask is, you know, let's do some long-term studies, let's get some hard science going, let's really look at this material and what's going on in the environment. We do know that this living pollution is affecting our soil. We know it's affecting weeds; it's creating new types of weeds. It's changing our plants. It's changing our soil life. Who knows what's going on in our bodies? We don't know. And there's no pressing need for this. They're not going to feed people with this. I mean, that's a joke. Or it's not a joke; it's a nasty dirty lie. We're not going to feed more people with this technology. It's going to put farm workers out of work. Where it has been introduced in California successfully is cotton, and what's going to happen is the same thing that happened in Nebraska: where we used to have four or five family farms in an area, we have one. And we know what happens when that happens. Sociological studies done on communities that have vibrant family farms, the community is richer, the workers are richer. Where you have very few landowners, you tend to have a few haves and a lot of have nots. I mean, that's one of the changes we'll see in the landscape in California as we allow this type of intensification of factory farming.

Another thing the cotton people see is no work. It's a slam-in technology, where you slam the crop, you spray it, and then you combine it. There's no work for farm workers. It's a reduction in farmers, a reduction of farm workers. There's something like 700,000 to a million farm workers in the state, and it's a good job. We need to make it better, but it is a good job for many people, just as farming is a good job for many people.

So, did I answer your question?

SENATOR FIGUEROA: Yes, you did.

MR. LEAHY: Senator Soto brought up a really good point. She was asking about perchlorate. Perchlorate is one of 70,000 industrial chemicals in this country. To give you an idea of how our regulatory scheme is already broken, hasn't done an adequate job on toxic chemistry, the reason why there's no test is this chemical… very few of these industrial chemicals really have been tested. There's no standards. You know, this stuff wasn't supposed to get in the food but it did. In this case, it was at the neglect of the Department of Defense who, for a million bucks, could stop this pollution. But it continues, and it's in 20 million people's drinking water. And then the farmers, our organic farmers, our water is now contaminated. We're still trying to figure out a test to really find it in food. There's no standard to make a good test yet because a regulatory scheme doesn't say, first: "You want to introduce something into society that might make our life better?" That's great, but let's look at the ramifications and let's figure out is this really safe or not? Every risk assessment of biotechnology that's been introduced failed. It's way too risky. There's no real great benefits other than to a few corporations who think that every time you eat you should pay a royalty. (Laughter.)

SENATOR FIGUEROA: Thank you very much. That's a great lead-in to our final speaker on this panel: Dolores Huerta, the vice president emeritus of the United Farm Workers, AFL-CIO, who will speak on how free trade agreements in the biotechnology industry impacts farm workers.

Thank you, Dolores, for being here with us.

MS. HUERTA: Well, thank you very much for having this hearing.

I just want to echo what everybody has said. I think that the State of California has a major responsibility to do something in terms of forming some regulations. We know that, as it's been said before, California was in the forefront because of many, many battles right here in the State Legislature in the whole issue of the pesticides. You know, technology is not always a good thing. Again, we can go back go to the whole issue of the pesticides. I remember a farm worker once saying, "They'll put a man on the moon before farm workers get unemployment insurance." And they did. We did. Many farm workers

throughout the United States still don't have unemployment insurance, even worker's compensation, throughout the Midwest and the South.

But here we have, maybe, something that can be done now. Again, it's even after the fact. When we came up here to Sacramento to try to get rid of some of these pesticides that were killing farm worker children and that were contaminating our food and hurting our environment, it was after much damage had been done. I remember my first testimony in the U.S. Congress was in 1965 to get rid of DDT, and it took many, many years after that, I think almost ten years after that testimony, before we were finally able to ban DDT along with other pesticides like parathion. We can just go on down the list, what Cesar used to call "The Dirty Dozen," of pesticides that were contaminating our food. We know that our country has the highest cancer rate of any country in the world, and a lot of that now is being said to be because of the stuff that's in our food because of the pesticides.

Well, what do you know? Now some of this genetically modified food, they've got the pesticides in the plant, right in the plant, to ward off the insects. So, what's going to happen to the people that eat that food that has the pesticide already in the plant? It's going to be a reversal of trying to get all these pesticides that have been banned. Unfortunately, many of our agricultural employers, just the way that they were sold on the benefits of pesticides, because they were unaware of what dangers that this could cost to them and to their families, some of the family farmers that I negotiated with died from cancer because they applied their own pesticides on their own food and died shortly afterwards.

So, we have a tremendous job in terms of just letting people know what the potential harm is, and if we don't know at this point in time what this genetically modified food is going to do to our bodies, then we shouldn't even allow it. We shouldn't even allow it at this point in time.

The other thing that I think is extremely harmful, the way that I see it, and this may sound a little inflammatory, but we know that these giant companies like Monsanto and EDM bought up the seed companies. Many of these seed companies, we had United Farm Workers contracts with these companies. They were bought up by these large corporations. Now the seeds are patented, which

means that the farmers have to buy the seeds every single time that they plant. This is what you meant about having to pay a royalty on the food that we eat.

So, to me, what's happening is that we see a control of the food supply. We know oil is a natural resource, but every time that the oil companies decide to raise the price of gasoline a dollar-and-a-half a gallon, we go to the pump and we pay it. We don't even question it. Here, you Senators in the Legislature have been in this tremendous debate now trying to balance the budget because we were all gouged by a few electricity companies, energy companies, out of Texas, and we're still trying to do something about that issue. What will happen to us when our food supply is controlled by a few multinational corporations? Which is exactly the way that this trend is going. This is extremely, extremely scary.

SENATOR KARNETTE: I have a question, Dolores. I was not aware of the fact that seeds are patented. Now, when you say all farmers, the seeds that they buy, would you explain that in a little more depth?

MS. HUERTA: Some of the multinational corporations like Monsanto and EDM have actually bought out the seed companies, seed companies like Ferry Morse and other companies that were very common brand names that we knew about, and they are buying these seeds. They are patenting the seeds! So, that means when farmers want to plant, they have to pay a royalty to be able to get these seeds to plant them, and then they can't use them again, these plants will not regenerate new seeds. They have to go back to that corporation again and buy seeds again for their next harvest.

SENATOR KARNETTE: What was it like before, before the big companies?

MS. HUERTA: They could buy seeds, but they weren't patented.

SENATOR KARNETTE: They weren't patented?

MS. HUERTA: No! They weren't patented. And also, you could use the seeds that you got from your own crops to have seeds to plant for the next crop.

SENATOR KARNETTE: You used seeds from your own crops, but you can't do that now.

MS. HUERTA: Right. And this is exactly where they're going, the direction that they're going. They want to really control the food supply of this country.

Now, we know that some of these same multinational corporations, they have had a devastating effect in terms of the globalization. These companies that have gone into Mexico and to Central America and to South America, many are talking about the small family farms. These small family farmers have been put out of business. Many of the farm workers that come here undocumented—they come here to work—had small family farms in Mexico and in Central America. The small coffee farmers. Some of our members, they tell us, "We had a small farm. We used to bring in 30 or 40 people at harvest time" but they cannot compete with these giant, multinational corporations that have gone into their countries. And the profits come out of the countries; they don't stay there. Family farmers have to come here to work at slave wages in many of our agricultural corporations.

So, no matter how you look at it, this is bad news. It's affecting the farm workers, the small family farmers, and, of course, ultimately affecting the consumers, not only in terms of their health but in terms of the product that they're going to have to pay. How much is their consumer dollar going to have to pay for that food once this food is patented and controlled by the multinational corporations?

So, the problem is even much bigger than what it appears, and we definitely do need a study on this. And I think that this Legislature has had the courage in the past to take positions and to make the changes that are then copied by other states. Many of the things that we did here back in the '70s Washington State, Oregon, have copied, other states have copied. So, I think now is the time for our Legislature to be really courageous, really strong, and take the leadership because we are the breadbasket of California and the breadbasket of much of this country.

Thank you.

SENATOR FIGUEROA: Thank you. While we have you here, I just wanted to ask you, are there any other concerns of the farm workers regarding some of the free trade issues or conversations that are going on?

MS. HUERTA: Well, there's a large number of concerns. We have had some of the farms that we had contracts with, with the farm workers, just totally lost their jobs because of these companies, and these are American companies that moved to Mexico or moved to Central America. We once had a contract for 2,000

farm workers in Florida with Coca-Cola. You know, they completely dismantled their farms, and they have then planted citrus groves in Belize and, I believe, also in China. So, you know, these runaway companies in Washington State, many of the small family farmers up there and the farm workers have been affected by companies that have left.

Just recently in Salinas, California, the Smuckers processing strawberry plant that had been there at least for about 15 or 20 years just closed down and is moving out. So, definitely it's had a very big effect.

SENATOR FIGUEROA: In the past when you've had these issues, is there one department or office throughout the state that you have been able to go to, to address these issues or to assist you?

MS. HUERTA: The only type of assistance that we were able to get for farm workers is to get some extended unemployment insurance benefits. That was about it.

SENATOR FIGUEROA: So, to go to the root of the issue, there hasn't been anyone who's really assisted you.

MS. HUERTA: No. In fact. . . . I mean, we were just in a hearing in Washington, where many of the people that are here today did a hearing in Washington, but it was not a formal hearing because the Democrats can't even get their bills heard in Washington right now—in Washington, D.C. There was an informal hearing where many of the legislators—Congresswoman Solis, Congresswoman Lynn Woolsey, and Barbara Lee, Dennis Kucinich, many others—came and attended the briefing. But as I said, in terms of Washington, D.C. right now, Democrats can't even get their issues heard, can't even have a formal hearing. This was an informal hearing that was attended by a dozen Congress people and many of the organizations that also gave testimonies.

SENATOR FIGUEROA: Well, as you can see, in the State of California we do have colleagues that are interested and want to take a lead. Because of the budget issues that we're addressing, some of them couldn't be here, but many of them showed their willingness to participate in rectifying some of these issues, or learning more about them.

MS. HUERTA: And we want to be there to help you.

SENATOR FIGUEROA: Thank you very much. Appreciate it.

MS. HUERTA: Thank you very much.

SENATOR FIGUEROA: We're joined by Senator Jack Scott. Thank you for joining us. How timely.

Our final panel today will examine the broader trade issues surrounding agricultural biotechnology and the implications for California lawmaking authority.

However, before we begin that discussion, I would like to invite Will Brieger from the California Office of the Attorney General to give us some background to the NAFTA dispute over California's phase-out of MTBE and the ways in which the AG's Office has been engaged in ensuring the trade investment agreements do not undermine state lawmaking authority.

So, thank you for joining us today. I look forward to hearing your discussion because everywhere that I've been, when we begin some of these discussions regarding NAFTA, the MTBE issue is always foremost on beginning that debate.

MR. WILL BRIEGER: Thank you, Senator Figueroa, and good afternoon. Will Brieger, Deputy Attorney General.

I'd like to try and tie this in to the broader issue of agreements under the WTO framework and the relationship they have or could have on California's legislative powers, which I know is a concern of this committee. And I'm glad to see that the committee is here and interested in this issue because the Attorney General is quite concerned about the interplay between trade agreements and California's ability to govern itself. Let me back up a couple of steps and explain why we've come to that conclusion.

There's several steps between a trade agreement and its effect on the ground here in California, and there are a lot of contingencies. So, it's not clear necessarily that the world is going to end tomorrow because of some trade agreement. Nevertheless, the framework that's in place under GATT or the World Trade Organization leaves, really, a very minimal role for a state to assert its interests. The agreements are negotiated by the U.S. Trade Representative, as you know, and there is some congressional direction of how those negotiations are supposed to be conducted. But the states' ability—of course, we have our

delegation in Congress from California—but the Trade Representative doesn't necessarily hew to the marching orders of Congress.

SENATOR FIGUEROA: How much of a communication is there between the two, between our congressional delegation and the representative? We just had a discussion over this. I was in Washington, D.C., and we had a number of questions regarding that. Can you shed some light on that?

MR. BRIEGER: I'm not sure how much, if any, ongoing communication there is. The Trade Representative operates fairly autonomously. Congress speaks through statutes, of course, and one of the statutes that Attorney General Lockyer had an involvement in directed the Trade Representative to negotiate, if possible, for a provision that foreign corporations will not get better treatment under the agreement that results than would a domestic corporation operating in this country; so that a company cannot come into the United States and say, "Look, this agreement gives me a free pass, and I don't need to follow even the minimal roles that American companies are following." So, at the urging of the Attorney General and attorneys general from other states, that was Congress's directive to the Trade Representative. It's not clear whether that goal will be reached in the pending agreements. It's a multiparty discussion, so it's hard to know. Even if the Trade Representative made that a first priority, there's no guarantee. It happens that the current Administration and the current Trade Representative is, I would say, not putting the states' policy interests high on his priority list.

SENATOR FIGUEROA: And how do we deal with issues when we have a domestic company by name only but their financial holdings are in another country? Does that fall into the same description that the attorneys general were concerned with?

MR. BRIEGER: Well, I mean, to the extent they are a domestic corporation in name, then they would probably be subject to our regulatory schemes.

SENATOR FIGUEROA: Okay.

MR. BRIEGER: One of the examples, I know you wanted to hear a short bit about, is a case under NAFTA which is closely similar to the World Trade Organization agreements in the dispute resolution process. We have been tracking

on behalf of the state a claim by a Canadian company—Methanex—that manufactures methanol. Methanol, of course, is a feed stock for the manufacture of MTBE. Well, Governor Davis, with the backing of the California EPA, concluded that MTBE represented too great a threat to our environment and should be banned. Methanex, in Canada, concluded that this amounted to a taking. They had big profits. California is a big market for them, for MTBE, and they're going to lose out on part of their market.

Now, in California courts—or in federal courts—if Methanex came forward and said, "This amounts to a taking under the United States Constitution," they'd be laughed out of court. It's just not even close. But under NAFTA, they're not going to go to a state court or a federal court. They go to an arbitration panel. Now, these arbitration panels to a lawyer look very different than a courtroom. For one thing, we're not allowed inside the room. We're only representing the State of California, which had a policy reason for banning MTBE. But we're not a party to NAFTA. The United States is a party. The other side of the dispute, of course, is Methanex, not Canada. Canada, by the way, is not supportive of this particular claim. Nevertheless, Methanex has a right to have this dispute arbitrated. Fortunately for us in this instance, the United States is fairly likeminded and has done a vigorous job in defending against the claim. It happens that USEPA is very close to banning MTBE itself. So, it happened that the policy interests have lined up to the point where we've found the federal government to be cooperative on this.

However, on a different issue, and it will surely arise, we cannot count on the federal government to see things the same way we do here in California. As we all know, California is often on the leading edge of various forms of regulation. Air quality laws were unknown in this country before California invented them, and they were then copied in Congress as the Clean Air Act. And the same thing happened in many other realms, particularly environmental laws. So, there are going to be things where we are on the leading edge and we don't have the federal government's support and vigorous defense. In that case, it's rather concerning to us that we can't be in the room; we can't participate in those disputes. Frankly, they're hidden from the public eye. They're private. I won't say they're secret.

That sounds a little too much like a conspiracy theory, but they're conducted out of the public's eye, and we'll see the result.

SENATOR FIGUEROA: Who is involved? Who's in the room?

MR. BRIEGER: Each party. So, Methanex being a party can appoint one arbitrator, and the United States appoints an arbitrator. The two arbitrators then choose a so-called neutral for a third, and that panel of three hears the dispute under their own rules.

SENATOR SOTO: Is the federal person appointed by the Administration?

MR. BRIEGER: Yes.

SENATOR SOTO: And right now the Administration is very unfavorable . . . (inaudible).

MR. BRIEGER: I think that's a fair summary, Senator Soto. As I said, this one, we're happy to be fortunate that they see the MTBE issue the same way California does, but that's maybe the exception to the rule. In any event, it's the dispute resolution consequences—or procedures, I should say—that are concerning.

On the bright side, there are a lot of obstacles between an international agreement and having an effect on the ground. For example, the Mexican truck issue, under NAFTA the Bush Administration unilaterally ordered, upon request of Mexico, that all trucks would be allowed to work across the border into California. Well, we have air quality standards that many of those trucks don't meet. There was no environmental review of that decision, and it's currently now on hold because they have required by court to go back and conduct an environmental review of the decision to allow Mexican trucks to operate in this country without limits. There will be a day, however, when they will be allowed, and there's basically very little the state can do to stop it. So, let me briefly address what we can do.

I think the state has to be prepared to assert itself at the federal level, in Congress and in the federal courts. From the Attorney General's perspective, we are more than happy to engage in the federal courts.

SENATOR FIGUEROA: How could we assist the Attorney General's Office in doing that, as in the legislative body?

MR. BRIEGER: Well, one way would be identifying the policy areas that are most important because I think we could and will see preemption challenges to California regulatory schemes as a matter of course in the future. I would differ from one of the earlier speakers who said there's no fear of federal preemption based on federal law should the Legislature decide to address biotechnology. The problem here may not be existing federal law on that subject, but there is a federal statute that allows the government to enjoin a state, or essentially nullify a state law that's deemed to interfere with trade. And it's that law that represents probably the most frightening threat to our sovereignty, because once an agreement, a World Trade agreement, has been reached, other countries will come to this country and say, "Wait a minute. This rule out of California is really just a trade barrier. It's even different than some of the other states, and we want it stricken." Now, with the right Administration, or the wrong Administration, depending on your perspective, they will try to strike it, and we'll be, I hope, ready for that.

Mr. Lockyer this year is the president of the National Association of Attorneys General, and one of his primary initiatives and focuses will be the issue of federal preemption and coordinating the other states to respond to that. The Bush Administration is very focused and very adept at achieving its agenda, often at the expense of state powers, so that is a point of concern for California, I think, because we do have many unique laws. I think we'll all be learning in the future a new vocabulary of terms, like the Codex Alimentarius Commission.

You know, that was described by an earlier speaker as science-based, which is it is. Nevertheless, there's a policy aspect to scientific decisions. That's a group that meets in Rome, and although they are subject to peer review, the California public and California Legislature has no role in setting the standards that that body adopts. And it's, I have heard some say, likely that the standard that will be set will be the least common denominator. It will be a rock-bottom standard by California standards. So, perchlorate, or something that's of interest to us, may be considered not a problem below some fairly high threshold, at which time any California standard. . . . and we have the Office of Environmental Health Hazard Assessment; 80 Ph.D.s working in a state agency. It's a unique body. They have

come out with some more protective standards. What's going to happen when those standards don't match? That, I think, is the concern that we all should have and need to be aware of.

SENATOR FIGUEROA: And those are the issues that this committee hopes to address and participate in and assist the Office of the Attorney General in any way we can.

MR. BRIEGER: Well, thank you very much.

SENATOR FIGUEROA: Yes, Senator Soto? We've also been joined by Senator Denham. Thank you for joining us this afternoon.

SENATOR SOTO: Is there anything that the Attorney General can do? Many of the officials in my district refuse to acknowledge the fact that there's perchlorate, particularly the polluters. I'm trying to get written letters to them, and only one has come forward and said they would help pay for the cleanup. Is there any way that the Attorney General can step in? There's twenty-two wells closed in my district, and that's not counting how many more are going to get closed. The people have to buy water. Is there anything that the Attorney General can do right now that I can hopefully wait for him to do or talk to him about, that we could put out an order by the Attorney General for these polluters? I have the list of the polluters, and they have come in my hearings and denied that they were responsible. The only one that's come forth that had said, "Well, maybe we did do it," was the Department of Defense. It was Paul Woodley. I finally had a conversation with him and he said, "You know, it was wrong, and we were responsible for a lot of it."

MR. BRIEGER: To answer your question, yes there is. We don't have administrative powers to determine liability, but we have powers to go to court based on the evidence, and as I understand it, there is quite a bit of evidence. So, we should probably talk about that.

SENATOR SOTO: So, we could work together, then, on trying to get that done before we have more wells closed. It's costing $2 million per well to put a cleanup mechanism on there.

MR. BRIEGER: No, there's very much something that. . . . whether someone can pay for the cleanup is sometimes a different problem.

That does remind me of one last point: as to what the Legislature can do. Many of the speakers have talked about sound science and a scientific basis. From a lawyer's perspective, defending—whether it's in state court, federal court, or a World Trade dispute—defending any standard is going to be much easier if there is a thorough administrative record and a scientific basis for it. So, something that is purely policy and hasn't gone through some sort of agency process is going to be very difficult for us to withstand and defend. So, we would encourage, if there is legislation to address any of the issues that are of concern, that it should take that into account in terms of creating the institutional structure to make sure that the resulting rules have an adequate scientific basis.

SENATOR FIGUEROA: Thank you.

MR. BRIEGER: Thank you very much.

SENATOR FIGUEROA: Appreciate it. Thanks for your statements.

Next we're honored to have Caroline Lucas, a member of the European Parliament, to address the issues surrounding the US-WTO suit against the EU from an EU perspective and its implications for the EU to maintain regulatory standards. I appreciate your insight and the willingness to come and address this body this afternoon.

Thank you.

DR. CAROLINE LUCAS: Thank you very much, and thank you for inviting me to give evidence to this very important hearing that you're holding this afternoon.

As you said, I wanted to bring some reflections from a European perspective both on the WTO case and also trying to draw out some of the implications of that, perhaps, for the California Legislature.

As you know, the U.S. brought a case against the European Union on GMOs at the World Trade Organization, claiming that the EU is violating its WTO obligations by not basing its decision on what it calls "sufficient scientific evidence" and that, therefore, the EU's de facto moratorium on GMOs is an unreasonable barrier to trade.

I just wanted to put down that I have a slight difference of emphasis with an earlier speaker who said that he thought that the U.S. challenge would remain on

the very narrow issue of the moratorium. Certainly, what's being discussed in Europe right now is the likelihood that the U.S. will shift that focus of its challenge away from the moratorium and onto some new legislation itself, because the European Commission has already said that when it's got new legislation in place in just a few months time on traceability and labeling, it will lift the moratorium anyway. And so, the feeling is that once that happens and once this new legislation on traceability and labeling is in place, it'll be that which the U.S. will then focus its case of the WTO on. So, I think it is a broader issue than just the moratorium.

Well, as you probably know, WTO rules say that you can't distinguish between products on the basis of the way in which they've been produced; basically, the production and processing methods. You're not allowed to make distinctions between imports on the basis of the way in which products are being produced unless such an act is necessary to preserve public health or the environment. Similarly, another part of the WTO's agreement, the so-called SPS Agreement, which stands for Sanitary and Phytosanitary Agreement, which essentially is talking about food standards, again, it says that "Members may introduce or maintain . . . (higher) measures," which are higher than the international standards, "if there is scientific justification . . ." So, both of those wordings—"if there is scientific justification" and if "such an act is necessary"—are clearly statements that are open to debate and discussion, and that's what the U.S. is obviously now going to be challenging.

The position of the European Union is that its actions are in good faith, that they are transparent, that they are nondiscriminatory, and that they are based on the precautionary principle: this idea that we should know more about the technologies that we are signing up to before we go too far down those roads. We see that there are good health and environment grounds to justify a tough regulatory regime based on full traceability and labeling and liability laws.

In Europe, the U.S. challenge seems to be striking, really, at the very heart of the way in which EU makes policies. It strikes a key principle of European law, which is the precautionary principle, and for many us, certainly, I think alarm bells are ringing, from those who remember the beef hormone case, which was a

WTO case again, against the EU brought by the U.S. The EU lost it, and as a result, we are still paying large amounts of compensation to the U.S. for health reasons because we don't want to eat beef from cows that have been fed with growth hormones.

So, this kind of action through the WTO we see as a major threat to local and national democracy. It's a direct challenge to governments' ability to regulate in the interests of health, safety, and the environment. I think the European Commission has recognized this and has been very robust in its defense. For example, it said the European defense is that "Each WTO member has the legitimate right to strike the right balance between the different interests at stake. The U.S. and other complainants should not seek to influence the sovereign decisions of other countries . . ." And the Commission has concluded very firmly, "Through its actions in the GMO field, the EU will always aim at responding to the legitimate interests of its citizens, not to narrow economic interests," which I think is quite a strong statement of purpose.

As I've said, just right now we are undergoing some work which will bring into place two pieces of key regulation on legislation on traceability and labeling. The vote on that takes place just next week. On traceability, what we're talking about is meaning that it should be possible to trace back each GM product to its original source, and that's particularly important if we want to be able to reduce the risk of contamination between GM and non-GM seeds. And on labeling, what we're trying to achieve there is mandatory labeling for all food or feed which is derived from GMOs irrespective of whether the genetic material or the proteins of the GMO can be detected in the final product.

So, going back to the WTO challenge and the implications here, I think that if the aim of the U.S. challenge is to persuade Europeans to accept GMOs, it could hardly be more counterproductive because I think people will be even more likely to reject what they perceive to be a very aggressive attempt to force something on them that they don't want. And I think if the WTO rules in favor of the U.S., then there will be a huge civil society backlash which will essentially make the Seattle protest look like a tea party. (Laughter.) And I think the implications of this are far-reaching because the EU was already considering taking retaliatory action at

the WTO on different issues—not on GM issues but on other issues—that it's been considering for some time; for example, the FSC Tax (the Foreign Sales Corporation Tax). The EU perceives that to be an illegal state subsidy which the U.S. gives to its own exporters, and it is talking about bringing a case to the WTO based on that. And if that happened, that could be a massive case because we know that it could be worth around $4 billion. That would mean to say that the EU could bring punitive tariffs on a whole range of U.S. goods; on anything not related to the foreign sales tax but on any product up to the value of $4 billion, which is a huge amount. There's also ill feeling growing as a result of U.S. action on steel tariffs. So, there are plenty of things in the EU's arsenal, if you like, that it might be tempted to throw back through the WTO.

And in terms of legislators here in California, it seems to me that, for example, if you wanted to go down the road of special GM labeling, the actions at the WTO would actually have an impact on that because if the WTO rules in favor of the U.S., then it would be pretty perverse for some of the U.S.'s own states to be implementing precisely the legislation that has just been challenged, perhaps successfully, at the WTO. So, I think these things are deeply connected.

I think that George Bush and Robert Zoellick will need to have a consistent position if they're to win their case at the WTO and that, I think, consistent within the United States, otherwise the EU will have perfect grounds to say, "Well, you're not even pursuing these same policies within your own country. How can you be forcing this on us as well?"

And so, I think to conclude, the issue of the regulation of GMOs isn't just an environmental issue, it's not just a health issue; it is fundamentally an issue of democracy. It seems to me that the people eating the food or the people living in the environment that might be affected by GM food should be the ones to decide domestic policy, not some secret WTO tribunal of three trade experts, because that's what it will be if it comes to a dispute at the WTO. And so, at stake are democracy and accountability and openness, and that's why I think these issues are so important for all of us.

SENATOR FIGUEROA: Thank you.

Let me ask you a question. If the U.S. were to win the case, what do you believe would be the economic and political impact in Europe?

DR. LUCAS: I think it would be enormous, the impact. I mean, I think, unfortunately, you would be seen as another sign of U.S. unilateralism, of U.S. aggression. I think people would be enormously angry about it in the EU. I think literally _____ the WTO has said it's likely to trigger further retaliatory action. And so, for people who want to see the WTO exist—that's another debate we might have some time—but for those people who believe WTO's doing a good job and that we _____ trade rules, that will be. . . . you know, the future of that organization, I think quite seriously, could be at stake, because if we're really having the two biggest players throwing at each other these massive trade disputes, and they will be big—I mean, GMO is big on its own but certainly for corporate sales tax, steel tariffs, those are very big as well—then I really think it would destabilize fundamentally the whole world's international trade. So, I think the implications of this could be enormous.

On the other hand, I also think that the influence that you could have in terms of trying to stop George Bush and Robert Zoellick would also be enormous, because if you want to have, as so many people have been speaking here this afternoon have said, if you want to have the right here to regulate, as you should be, how you want to be able to have GMOs in this state—whether you want them, whether you don't, what kind of labeling you want—if you want to keep that, then it's really important that the WTO doesn't rule in the favor of your President, unfortunately, on this case because I think that would absolutely undermine the ability of individual states, then, to have these kind of rules that they want too.

SENATOR FIGUEROA: I think you will see the State of California playing a larger role in these issues.

Thank you.

Next we'll have Ms. Mittal of the Food First/The Institute for Food and Development Policy to give us a context of how it fits in the larger global picture.

Thank you for joining us.

MS. ANURADHA MITTAL: Thank you very much.

You might wonder what I'm doing here with the California Legislature because I'm not going to just speak as a food policy expert, but I also want to speak to you and appeal to you as a citizen of India.

You have heard a lot of very compelling arguments and consents around biotechnology from several people; its impact on California's economy, on farmers and farm workers. I have no doubt that you will be very torn as you kind of muddle with these concerns because the images of hungry and starving people from the Third World will be flashed before you; that here you want a sovereign part as legislators to regulate and act on behalf of your constituents, and yet, there are 800 million starving people in the Third World and this technology can save the hungry, starving populations.

What I wanted to address was, first of all, to share with you that hunger is a very complex phenomenon in the Third World, and my own country, India, is the third largest producer of food, while it is home to almost 380 million starving people in the Third World. When we talk about 800 million starving people, 380 million live in my country. In the year 2000, while we had 18 million tons of excess food grains which were rotting in the granaries of the Food Corporation of India, we had starvation that's around the country because thanks to the free trade regime, our country has been told to find export markets on foreign exchange, and those markets don't exist for us. In fact, we have cheap subsidized grain being dumped by American agribusinesses in our country as a result of over production, according to Indian government, 2 million farmers lose land—are displaced from land each year.

We earlier heard Dolores Huerta. Every day 600 farmers in Mexico are being displaced from their land as a result of these freed trade agreements, and they are the ones who come and toil in the fields of California and Florida, in this country, as farm workers.

So, in terms of when we had that kind of excess food grains, we had starvation deaths, we had that kind of hungry population in my country, and that phenomenon has been reoccurring each year. When Indian government is unable to find export markets, we have been told to dismantle our public distribution system, our social safety net, and people are starving. And India is not unique.

Almost 78 percent of developing countries that report child malnutrition are food-exporting countries. We heard about famine in Southern Africa last year, and what many of us do not realize, in the case of Zimbabwe, it used to be a net food exporter, and it is the destruction of food reserves because of the trade agreements that free market will take care of it, it has devastated our countryside; it has devastated the livelihoods.

In terms of trade agreements, it has already led to a corporate concentration of our food system. We are seeing, as I mentioned, farmers in Mexico or India hurting, but what is amazing is that the family farmers in this country are hurting as well. The hearing that Dolores Huerta mentioned was organized by Food First where we had family farmers, farm workers, testify before 22 members of Congress what the impact of free trade agreements has been on their livelihoods.

So, if you combine biotechnology with these free trade agreements, it's basically going to mean even more devastation, not just for the countryside in the Third World, but basically for our family farmers and farm workers right here in the United States—especially in California.

In terms of just the pressure that is being used, if it was really good for the Third World, I wanted to share with you what's happening right now. USDA has been told by USAID to report any Third World country that rejects food aid because then diplomatic action can be taken against them to make them accept the shipments of GM food aid, because Zambia, India, Sudan have rejected GM food aid. We also have bills in the Congress where AIDS medications would be withheld from African nations if they refuse GM food aid.

And then, of course, very important is the challenge to the EU. It is not just a challenge to the EU. It is a signal to the whole world. In fact, I would say it is also a signal to the California Legislature that in case you decide to move forward in terms of regulating on behalf of the environment and people, that it might be seen as a trade barrier. So, it is not so much about a challenge to the EU as we head towards Cancun; it is sending a very strong signal, especially to the Third World countries, that if we dare to disobey, as we saw in Doha, "You're either with us or you're against us." And it will be the same message that will come to California legislators that "You are with us or you're against us."

So, I would just end with an appeal that as elected officials, especially when it comes to California which has given a model of agriculture grain revolution, it has done a lot of devastation in my part of the world. And it is wonderful to be sitting here with this kind of leadership. It is an appeal that California can send a different model of agriculture to the rest of the world. The time for that has come.

Thank you.

SENATOR FIGUEROA: Thank you. Definitely.

Senator Scott.

SENATOR JACK SCOTT: Certainly, I found your testimony very compelling and appreciate what you brought to our attention. I did want to ask one question. You said something about Zimbabwe, and you said it rather quickly, and I wanted to ask a question about that. What did you say?

MS. MITTAL: What I said about Zimbabwe is that one of the major reasons of hunger in Zimbabwe is that Zimbabwe used to be a food exporter from the region, also to Europe, but we have seen under the World Trade Organization, it was told that every country that used to have food reserves, those reserves have been dismantled. We have been told that you don't need to have that because free trade allows movement of grain from country to country through exports and imports. So, when countries have let go of the food reserves and when the bad weather, say a drought, comes in, it leads to starvation, and the country might not have the money to get the grain from outside. It also makes them dependent on accepting any kind of food aid that's given to them. So, that has played a big role in hunger, not just in Zimbabwe but all of us of the . . .

SENATOR SCOTT: I'm sure it has, but I think we also have to be very blunt about the fact that Mr. Mugabe's policies have also led to a great deal of starvation. His treatment of driving all of the white farmers out and in some way or another turning it over to individuals, many of whom were not equipped to handle the farms or anything, has cut the production in that country a great deal.

MS. MITTAL: As I mentioned, I agree that there are a lot of complex reasons behind hunger in the Third World and very often it is also corruption and others. In case of white farmers, I would just like to point out that most of the white farmers were actually tobacco growers and not food growers.

SENATOR SCOTT: Well, that isn't exactly what the news has said. I just wanted to point out that I think the policies of Mr. Mugabe, and wholly known to his own power and in a demagogic way deciding to do what he could to change the agriculture of that country, has proven to be very harmful.

MS. MITTAL: No, I agree with you, Senator Scott. There's lots of reasons. The biggest one is dismantling of the social safety net in the richest country of North America. We have over 36 million Americans who are starving, and there's no shortage of food production. So, it is very often social and economic policies led by, unfortunately, governments which should be democratically elected, which should represent the wishes of the people. Yes, I agree with you.

SENATOR FIGUEROA: Thank you.

Our next speaker for the day is Lisa Hoyos of the California Coalition for Fair Trade and Human Rights who will speak to the growing constituency base of citizens engaging in the dialogue of international trade rules.

I'm glad to see you, Lisa. The last time I saw you was in South Africa discussing some of these issues. So, thank you for joining us here in California. We appreciate your expertise here in California now.

MS. HOYOS: It's a pleasure to be here. Thank you.

As was said, I'm representing the California Coalition for Fair Trade and Human Rights, and our main objective is to educate civil society, constituencies, labor, environmental groups, and so forth around the negative impacts of international trade policy on our local, state, and federal laws; also, and perhaps more importantly today, to mobilize these constituencies to influence perspectives of elected officials on questions of international trade. Our members are folks you may have heard of: the California State Federation of Labor is on our board, Sierra Club, National Network for Immigrant and Refugee Rights, AFSCME, Public Citizen Communities for a Better Environment, Food First, and several other representatives.

As it's been conveyed today, trade policy is increasingly much more about economic and social policymaking than it is about tariff policy on manufactured goods, as it was perhaps under the GATT negotiations and trade policy in the '80s and early '90s. The spheres of our economic policy and public policy that are

impacted by international trade policy are growing every day, being expanded into areas of services, education, access to water, all sorts of new areas. Trade policy will affect whether or not we in the State of California can defend the integrity of our right-to-know laws and our food safety laws; whether we can attach social goals such as sustainable energy incentives to our procurement policies; whether we can preference municipal providers of basic services such as water and electricity over foreign multinationals that might wish to bid for California's services. Our coalition is very, very pleased that your Select Committee is continuing under your new leadership as chair, Senator Figueroa, and that you'll be continuing to look into the links of international trade policy and the preservation of our important state laws.

I thought I would be going after Mr. Porterfield. Essentially, there's a policy prescription I've read of his, but I don't want to steal what he's going to say, but essentially he makes a couple of key suggestions as to how this committee and the state can engage around questions of trade policy with the federal government, and they're twofold. One is to look more into—and I think this was also stated by Mr. Brieger—to look more into the areas of our day-to-day laws, our livelihoods, our jobs, our economic ability to use procurement in progressive ways, to look into how, really, that intersects with international trade policy that's being negotiated by our government as we speak, and also, to play an oversight role, and many people have spoken to that as well.

While it is, of course, Congress that votes on trade agreements, it is going to affect us in our backyards. It's going to affect our right-to-know laws and other such important laws. And so, you're in a unique position as legislators to be able to communicate to Mr. Zoellick and the Bush Administration and so forth just how concerned we are about the. . . . I don't want to sound too dramatic, but we fought in social movements, as Dolores Huerta said earlier, for generations to get the strong laws we have in California and that those could easily be eroded in the coming wave of trade agreements. And so, it's really urgent that we communicate that message to the United States Trade Representative.

I'd like to share in that spirit a quote that appeared in the *Wall Street Journal* recently, a couple months ago, by a Wisconsin state legislator named Mark

Pocan. He was talking about the services negotiations currently taking place in the WTO, and he said (quote), "What we hear is going on in these WTO talks will run smack up against laws in states like mine, but for now it's behind closed doors." In other words, lawmakers at all level of governments aren't aware of what's being negotiated in these agreements until final negotiated documents come before Congress for only an up or down vote, because, as we know, we're now in an era of fast track, which means well-intentioned Congress members who care about our laws in California—we have the largest congressional delegation—won't be able to amend trade agreements. They'll just have to take them up or down, which then makes it incumbent upon us to intervene now, to really ask through "Dear Colleague" letters and other sorts of resolutions and so forth to see, "Well, Mr. Zoellick, what are you negotiating vis-à-vis the current services negotiations, agricultural negotiations? What agenda will you be bringing to the Cancun ministerial in September?"

I guess in closing, by way of desire to engage more with this committee in the future, Cancun, as I said, will be coming up in September. There's the new issues that are on the table there: government procurement, competition policy, trade facilitation policy, and investment.

SENATOR FIGUEROA: Will you be there?

MS. HOYOS: Yes. And I hope some of you will be there as well.

SENATOR FIGUEROA: We're trying.

SENATOR SOTO: Where's this now?

MS. HOYOS: In Cancun, Mexico.

SENATOR FIGUEROA: It's going to be a lot of work. We don't know if we'll have a budget.

MS. HOYOS: At any rate, there's some really important negotiations that will be happening there, and even if members can't go—because, typically, by the time you get to Cancun or Miami for the FDA ministerial, a lot has already been done. So, it's sort of early intervention now: the letter to Robert Zelick today urging what's going to be negotiated around these new issues.

So, anyway, if I can also just say in closing that Anna Blackshaw has been the staffer to the committee since Tom Hayden started it, followed by Sheila Kuehl,

and we're just pleased to be able to work with her as well. I've known you for years in the labor movement, and I look forward to continue to work with all of you on these issues.

Thank you very much.

SENATOR FIGUEROA: Thank you. Thank you for being here.

And our last speaker will be Matthew Porterfield of the Georgetown University Law Center. I spent some time with him just last weekend. Wasn't it?

MR. MATTHEW PORTERFIELD: Yup. A few days ago. Other side of the country.

SENATOR FIGUEROA: Feels like a whole other month. To provide us with some background on the US-WTO suit against the European Union for their temporary moratorium on the GE crops and also an analysis on international trade rules as they relate to California. For example, could the WTO case being brought by the U.S. against the EU's moratorium on GMOs trigger a retaliatory case that could affect precautionary measures adopted by California and other states? I think there was some discussion about that. And could these trade negotiations impact California law in labeling agricultural markets and consumer protection?

So, I just thought, because of time, if you could just kind of speak some specifics but then in generalities. Since you're somewhat the expert and someone who works at a law school, you're used to kind of summarizing it all. And so, I'd just thought this would be a good way to end our meeting. And thank you for coming. I really appreciate it. And I know you just had to get away from that weather.

MR. PORTERFIELD: That's right. It's a lot drier out here.

SENATOR FIGUEROA: It was hail and thunderstorms when we were there last.

MR. PORTERFIELD: Thank you, Senator. There's three issues I'd like to try to cover briefly.

First, I'd like to review the primary trade law principles that are involved in the dispute between the United States and the EU over genetically engineered food and to discuss how those principles could be used to challenge California laws.

Second, I'd like to discuss what a conflict between state law and trade law and trade rules means in terms of both its international legal implications and its implications as a matter of U.S. law. And finally, I'd like to briefly discuss what some of the options are for how the California Legislature could respond to the threat to state law imposed by trade rules.

The U.S. case against the EU is based upon four different trade agreements and about twelve different articles within those trade agreements. It's going to be incredibly complicated, but there are three principles, I think, that are at the heart of the U.S. case, and if you understand these three trade law principles, you can get a pretty good idea of what the case is about.

The first principle, which Dr. Lucas referred to, is that, in general, under trade rules governments are not supposed to distinguish between products based upon how they're made but only upon the physical attributes of the product or how the products perform. The best-known illustration of this principle is the tuna-dolphin case in which the United States was successfully challenged in its policy of banning the import of tuna which was harvested in a way that resulted in killing dolphins. The trade panel reviewing it said, essentially, the physical composition of the tuna is the same; it's not a valid basis for making a distinction. That was sometimes known as the PPM issue (or process and production method issue).

The second principle is that, generally, regulations should be based upon sound science, and that's often juxtaposed to the assertion of the precautionary principle, which says, generally, that in cases of scientific uncertainty, that government should have the ability to regulate to prevent harm. An illustration of that is the beef hormones case in which there is a dispute as to whether or not there is any scientific basis for banning the import of hormone-treated beef into Europe. The EU said that it was doing it because of health considerations. The U.S. said that there wasn't any scientific evidence supporting that. The U.S. won.

This dichotomy is not as clear as it's often presented, and really, it's more of a continuum. Governments will take a more-or-less precautionary approach, depending upon the regulatory area involved. For instance, in the U.S., we routinely take a precautionary approach to the regulation of pharmaceuticals.

Pharmaceuticals are presumed to be potentially dangerous, and they have to be demonstrated to be safe before you can introduce them into the market.

In other areas of public policy, the most recent articulation of the precautionary principle I've heard by a senior official was a couple of weeks ago when Defense Secretary Rumsfield was quoted as saying "that the absence of evidence is not evidence of absence." He was referring to weapons of mass destruction, but I think it's also an aggressive assertion of a precautionary approach.

The third principle which I think is going to be central to the US-EU dispute is going to be the principle that, in general, measures must be the least trade restrictive way of accomplishing a legitimate government objective. So, assuming the WTO determines in the US-EU dispute that there is a legitimate basis for banning the import of genetically engineered food, whether that be a safety basis or based upon consumer preference, there is still an obligation under several trade agreements for the European Union to use the least trade restrictive means available but achieving that objective. An example of that principle is the Thai cigarettes case. In 1990, the United States challenged a ban by Thailand on the import of foreign cigarettes. Thailand said it was doing it to protect public safety. The trade panel found that that was an illegitimate measure because there are less trade restrictive alternatives to ensuring public safety, like cigarette labeling, public education campaign, etc.

Now, each of these principles could also be used to challenge California laws that are either on the books or being contemplated currently. For instance, the presumption against processed-based measures could be used to challenge California's organic standard. The standard for organics is based upon how food is produced, not necessarily the physical composition of the food.

Similarly, the requirement that measures be science-based could be used to challenge California's Proposition 65. Proposition 65 requires that products which contain carcinogenic materials have to be labeled as such. It doesn't require a showing that those products are present in levels which could actually cause cancer. It merely requires that if the products contain any detectable level of carcinogenic material, they have to be labeled as such. So, that probably would

not withstand a WTO challenge because there's no demonstration that the levels of carcinogens present are sufficient to cause a human health harm.

The third principle—the requirement that measures be the least trade restrictive way of accomplishing the governmental objective—could be used to challenge the proposed moratorium on the introduction of genetically engineered fish into California.

By their nature, moratoria are not the least trade restrictive way. If you're completely banning a product, there are always going to be lesser included ways of trying to achieve that objective. So, for instance, labeling could be considered to be less trade restrictive. Voluntary labeling could be considered less trade restrictive than mandatory labeling. Public education campaign could be considered to be less trade restrictive than voluntary labeling, and so on and so on down the line.

So, what does that mean in terms of the actual status of state law under trade agreements? Well, when talking about the legal status of state law under trade rules, you have to distinguish between the implications under international law and the implications under domestic law. Under international laws, some national measures, including state and local laws, are presumptively covered under trade rules. So, every time the U.S. is negotiating a trade agreement, it is presumptively negotiating over state regulatory authority. State regulatory authority is almost always—there are a few exceptions—but almost always going to be the scope of any trade agreement negotiated.

Trade rules are in force through the dispute settlement process. In the case of trade rules, it's state-to-state dispute settlement, meaning that the countries are the parties to the dispute. In the case of investment rules, which Mr. Brieger was discussing earlier, individual corporations actually can invoke the dispute settlement process.

The remedies for a violation of a trade rule is generally the imposition of retaliatory tariffs: trade sanctions. The remedy in the case of investment disputes is actual monetary damages. So, corporations can sue under a NAFTA Chapter 11 and actually get cash if they win.

UNIDENTIFIED: (Inaudible.)

MR. PORTERFIELD: Who has to pay? Good question. The federal government is required to pay. It hasn't happened yet in the U.S.

SENATOR FIGUEROA: So, how does that mechanism. . . . could you kind of chart that out, if you don't mind?

MR. PORTERFIELD: How does it work for the federal? There is a federal Judgment Fund which is set up to pay damages from general suits against the federal government. The assumption is that the money would come out of the federal Judgment Fund. I'm not sure that Congress ever actually addressed this issue, thought about it in ways of sovereign immunity and authorized this type of payment. It's unclear whether the federal government would have the authority to go out to the states for indemnification in a case like that. The usual bar to money damages awards against the states is 11th Amendment sovereign immunity, which doesn't apply in cases brought by the federal government. But I think it's more likely than, actually, a suit by the federal government. In that instance, it would be that they would go after you through some sort of conditional spending: block grants; some way through the appropriations mechanism. That way they could do it without their fingerprints in diffusing the political hit they'd have to take from actually bringing federal litigation against the states.

The domestic law implications of a conflict between state law and trade rules, the good news is that there's no automatic legal effect. So, assuming any and all of the laws that I just mentioned California state laws are in violation of one or more trade rule, that does not mean that California cannot continue to enforce those measures or continue to enact additional measures. That's the good news. The bad news is that, as Mr. Brieger pointed out, the federal government does have the authority to go into federal court and sue to preempt state laws based upon trade rules.

I was interested to hear his characterization of. . . . the Attorney General's Office view of how likely that is. It hasn't happened yet, but that's been the other shoe that people have been waiting to drop for a while. That was a subject of contention in the process leading up to the implementation of the WTO agreements. A lot of the state and local government organizations lobbied aggressively, including NAG and the National Conference of State Legislatures,

trying to preclude the federal government from having the authority. The USTR would not budge in that point, and that became. . . . their bottom line demand is that they insisted they maintain the authority to preempt state law based upon conflict with the trade rules.

In addition to that type of formal legal challenge, state laws can also, in the state legislative process, can be influenced through lobbying, if you have a conflict with the trade rules. Ohio, a few years ago, tried to pass a law based on Proposition 65 and wanted to make that a model for state legislation. It was aggressively lobbied against on the grounds that it would violate our trade obligations, and the bill was killed. There was various other anecdotal examples of how trade rules have been used indirectly to push for either the repeal of legislation or to block the passage of legislation.

This leads to my final point, which is, what are the options for how the California Legislature can respond to this potential for conflict? One option would be do nothing; to leave it to the federal government to represent your interests in trade policy. And that's traditionally been the approach taken by the states.

UNIDENTIFIED: (Inaudible.)

MR. PORTERFIELD: Okay. Cross that one off.

I just raise that because usually the grounds raised for pushing that position is that state legislatures lack either the jurisdiction—it's not an area of your authority—or the competence to get involved and influence trade policy. And I would think California has already demonstrated on both accounts that that's not the case.

The first step in developing a process for legislative trade policy is, I would suggest, to identify what your priorities are. Trade law covers the range of potential activities that a state government could engage in, and because of limited time and resources, I think you're going to have to decide which are your priorities.

Just some examples of the issues you might want to focus on are issues involving trade of goods (we just discussed), issues involving regulation of services, like the provision of electricity (which is an issue of concern here in California), health care, insurance, and solid waste management; all of which are issues which are covered under the General Agreement on Trade in Services.

Procurement standards are also governed under a different body of trade rules, and international investor rules like those contained in NAFTA Chapter 11 are now being included in other bilateral and regional agreements and may be included in the next round of WTO agreements.

Once you decide in your priorities this committee can actually make itself heard on trade policy, I think you can follow the same mechanisms that state legislatures traditionally do in trying to influence federal policy: you can talk to the USTR. The previous chair of your committee had an exchange of letters with the U.S. trade ambassador that was very revealing in terms of the degree to which the USTR has or has not considered the interests of states in formulating trade policy. In cases like the pending US-EU trade complaint, the committee could urge USTR to frame the complaint as narrowly as possible. There's been a lot of discussions, suggestions, either this is a narrow complaint or this is a broad complaint designed to change the global climate for biotechnology and to affect, on a broad scale, the scope of government regulatory authority.

One thing which I think is indicative of why the USTR is doing this is that the EU has said that it will not lift the moratorium even if it loses the WTO complaint. The U.S. has said that it understands that and it doesn't care.

DR. LUCAS: (Inaudible) . . . I certainly haven't heard that.

SENATOR FIGUEROA: I'm not trying to start a debate, but you see, the audience wasn't able to see her face. It was like . . . (laughter).

MR. PORTERFIELD: What I've heard from people in the UC office in Washington is that they do not think that the internal political climate in the EU will allow them to modify the moratorium in response to the trade complaint.

DR. LUCAS: Well, that's certainly not the position of the commissioner, Pascal Lamy, who would even deny that the moratorium exists and certainly says that authorizations will start just as soon as the legislation on labeling and traceability is in place in a few weeks time. I hope you're right, but.

SENATOR FIGUEROA: Thank you.

MR. PORTERFIELD: My point is that I think the reason that the U.S. realizes that it is, at most, highly problematic that they will be able to force the EU to do what it wants through the WTO litigation process. . . . I mean, all the major

trade complaints between the U.S. and the EU in the last few years, the losing country refuses to comply. That's been the case for the foreign sales corporation case, as the case with the beef hormones. Generally, the large, powerful trading blocs—the United States and the EU—don't like to comply with trade rules when they lose. So, I think, really, what the motivation behind the trade complaint is that they're trying to establish a global standard for the regulation of biotech in general and a global standard for science-based regulatory policy. So, I think it's important that the U.S. complaint be framed as narrowly as possible so to the extent that law is made through the litigation process of the WTO, as little bad law is made as possible.

Finally, I think that this committee can have a lot of effect just by working through Congress. During the debate, which Mr. Brieger mentioned earlier, during the debate on the Trade Act of 2002 last year, there was a discussion of what the standards should be governing these investment rules: the rights of foreign investors to bring claims against regulatory measures. The critical difference in how that debate came about and the reason that there was language included in the Trade Act, saying that trade rules should not give foreign investors greater rights than U.S. investors enjoy, was the involvement of state and local government officials. Attorney General Lockyer played a leadership role in organizing some of the state AGs to submit a letter. The California Legislature submitted letters. The national organizations representing state and local officials—NCSL, NAG—all played a role in lobbying Congress, and they got the language that they were looking for.

And finally, I just note that you're not alone in this. There are other states who are beginning to take a look at trade policy. Washington State just formed a Joint Committee on Trade Policy and State Law. And the national organizations representing state and local government, including NCSL in particular, have gotten aggressively involved in the issue. And I think that to the extent that you can network with those organizations, it will increase your leverage on trade policy.

SENATOR FIGUEROA: Is that it?

MR. PORTERFIELD: That's it.

SENATOR FIGUEROA: Two presentations in one. Thank you very much.

I want to thank all of our witnesses for the compelling and timely comments, and I want to thank the members of the Legislature who came to hear and participated in this discussion.

In particular, I want to thank Nick Vucinich and Elisabeth Kersten of the Senate Office of Research for allowing us to release their timely report examining the role of the state and the assessment monitoring and the oversight of this industry—information that helped us frame the debate for today's discussion. I also want to thank Leah Cartabruno from Senate Rules for the survey she undertook as part of the SOR study and for the wonderful research that she has contributed to this research. There's a lot of people behind the scenes that contribute than to just the witnesses that you heard today. And real thanks and appreciation to our staff, Anna Blackshaw, for being a continuous person of compassion and caring in these issues. It has been great to have that continuous involvement of a staffer who has been able to participate in this committee since its establishment.

These are issues that are of great importance to us here in California, as you've heard from all of our witnesses. As the global economy becomes increasingly integrated, as the trade negotiations rapidly develop, it becomes imperative for us as lawmakers to understand what it means for our state.

Trade agreements that undermine our traditional democratic process jeopardize the public welfare and pose grave consequences for democracy here and throughout the world. Trade, as important and valuable as it is, should not be valued above our hard-won, long-cherished self-governing freedoms.

I look forward to continuing this discussion. Thank you for being here and joining us in this important debate.

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